

RAILROAD UNEMPLOYMENT INSURANCE AND RETIREMENT IMPROVEMENT ACT OF 1987

HEARING

BEFORE THE

**SUBCOMMITTEE ON PUBLIC ASSISTANCE AND
UNEMPLOYMENT COMPENSATION**

OF THE

**COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES**

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

H.R. 2167

**TO AMEND THE RAILROAD UNEMPLOYMENT INSURANCE ACT TO
ASSURE SUFFICIENT RESOURCES TO PAY BENEFITS UNDER THAT
ACT, TO INCREASE THE MAXIMUM DAILY BENEFIT PROVIDED UNDER
THAT ACT, AND FOR OTHER PURPOSES**

JULY 14, 1987

Serial 100-45

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THE RAILROAD UNEMPLOYMENT INSURANCE AND RETIREMENT IMPROVEMENT ACT OF 1987

TUESDAY, JULY 14, 1987

**HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON PUBLIC ASSISTANCE
AND UNEMPLOYMENT COMPENSATION,
*Washington, DC.***

The subcommittee met, pursuant to call, at 10 a.m., in room B-318, Rayburn House Office Building, Hon. Barbara Kennelly presiding.

[The press release announcing the hearing and a copy of the bill, H.R. 2167, follow:]

FOR IMMEDIATE RELEASE
MONDAY, JUNE 22, 1987

PR 66
SUBCOMMITTEE ON PUBLIC ASSISTANCE
AND UNEMPLOYMENT COMPENSATION
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-3627

THE HONORABLE THOMAS J. DOWNEY (D., N.Y.), ACTING CHAIRMAN,
SUBCOMMITTEE ON PUBLIC ASSISTANCE AND UNEMPLOYMENT COMPENSATION,
COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES,
ANNOUNCES A HEARING ON H.R. 2167, THE RAILROAD
UNEMPLOYMENT INSURANCE AND RETIREMENT IMPROVEMENT ACT OF 1987,
TO BE HELD ON TUESDAY, JULY 14, 1987

The Honorable Thomas J. Downey (D., N.Y.), Acting Chairman, Subcommittee on Public Assistance and Unemployment Compensation of the Committee on Ways and Means, U.S. House of Representatives, announced today that the Subcommittee will hold a public hearing on H.R. 2167, which was jointly referred to the Committee on Ways and Means and the Committee on Energy and Commerce. H.R. 2167 would authorize a new experience-rated tax system and would increase benefits under the Railroad Unemployment Compensation program. The hearing will be held on Tuesday, July 14, 1987, in room B-318 Rayburn House Office Building, beginning at 10:00 a.m.

In announcing the hearing, Chairman Downey said, "The Committee on Energy and Commerce has reported H.R. 2167 which provides an increase in daily benefits for unemployed railroad workers, and which sets up a new experience-rated tax system to finance benefits. The Committee on Ways and Means has jurisdiction over the tax aspect of the railroad unemployment compensation program and is concerned about the debt that the unemployment compensation program owes to the railroad retirement program." Witnesses at the hearing are encouraged to discuss ways this debt could be repaid by the year 2000, a goal that was mentioned in the Committee on Ways and Means' report on the Railroad Retirement Solvency Act of 1983 (P.L. 98-76).

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD

Individuals and organizations interested in presenting oral testimony before the Subcommittee must submit their requests to be heard by telephone to Harriett Lawler [(202) 225-3627] no later than close of business, Wednesday, July 8, 1987, to be followed by a formal written request to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The Subcommittee staff will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee [(202) 225-1025].

It is urged that persons and organizations having a common position make every effort to designate one spokesperson to represent them in order for the Subcommittee to hear as many points of view as possible. Time for oral presentations will be strictly limited with the understanding that a more detailed statement may be included in the printed record of the hearing (see formatting requirements below). This process will afford more time for members to question witnesses. In addition, witnesses may be grouped as panelists with strict time limitations for each panelist.

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Subcommittee are required to submit 75 copies of their prepared statements to the Subcommittee office, Room B-317 Rayburn House Office Building, at least 24 hours in advance of their scheduled appearance. Failure to comply with this requirement may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE

Persons wishing to submit a written statement for the printed record of the hearings should submit at least six (6) copies of their statement by the close of business, July 23, 1987, to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements for the record of the printed hearing wish to have their statements distributed to the press and interested public, they may deliver 75 additional copies for this purpose to room B-317 Rayburn House Office Building on the date of the hearing.

SEE FORMATTING REQUIREMENTS BELOW:**C. COMMITTEE ON WAYS AND MEANS FORMATTING REQUIREMENTS FOR PRINTING OF HEARING STATEMENTS, WRITTEN COMMENTS AND EXHIBITS**

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and public during the course of a public hearing, may be submitted in other forms.

100TH CONGRESS
1ST SESSION

H. R. 2167

To amend the Railroad Unemployment Insurance Act to assure sufficient resources to pay benefits under that Act, to increase the maximum daily benefit provided under that Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 23, 1987

Mr. THOMAS A. LUKEN (for himself, Mr. COATS, Mr. SLATTERY, and Mr. WHITTAKER) introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Ways and Means

A BILL

To amend the Railroad Unemployment Insurance Act to assure sufficient resources to pay benefits under that Act, to increase the maximum daily benefit provided under that Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Railroad Unemployment
5 Insurance and Retirement Improvement Act of 1987".

1 **SEC. 2. REFERENCES TO RAILROAD UNEMPLOYMENT INSUR-**
 2 **ANCE ACT.**

3 Except as otherwise expressly provided, whenever in
 4 this Act an amendment or repeal is expressed in terms of an
 5 amendment to, or repeal of, a section or provision, the refer-
 6 ence shall be considered to be made to a section or other
 7 provision of the Railroad Unemployment Insurance Act.

8 **SEC. 3. TABLE OF CONTENTS.**

Sec. 1. Short title.

Sec. 2. References to Railroad Unemployment Insurance Act.

Sec. 3. Table of contents.

TITLE I—FINANCING PROVISIONS

Sec. 101. Amendments relating to definition of "compensation".

Sec. 102. Contribution adjustments.

Sec. 103. Administrative expenses.

Sec. 104. Notification to employer.

TITLE II—BENEFIT AND OTHER ADJUSTMENTS

Sec. 201. Waiting period for benefits and benefit increases.

Sec. 202. Qualifying condition.

Sec. 203. Increase in maximum permitted subsidiary remuneration.

TITLE III—RETIREMENT ACT AMENDMENTS

Sec. 301. Additional lump sum payment in certain cases.

Sec. 302. Deletion of last person service as a disqualification.

Sec. 303. Earnings of disability annuitants.

Sec. 304. Allowance of credit for military service.

9 **TITLE I—FINANCING PROVISIONS**

10 **SEC. 101. AMENDMENTS RELATING TO DEFINITION OF**
 11 **"COMPENSATION".**

12 (a) **IN GENERAL.**—Section 1(i) is amended—

13 (1) by inserting "(1) **IN GENERAL.**—" after "(i)";

14 (2) by striking out "": *Provided, however, That in*
 15 *computing*" and all that follows through "1983, shall

1 be recognized." and inserting in lieu thereof ", except
2 that in computing the compensation paid to any em-
3 ployee, no part of any month's compensation in excess
4 of the monthly compensation base (as defined in subdivi-
5 sion (2)) for any month shall be recognized."; and

6 (3) by adding at the end thereof the following new
7 subdivision:

8 "(2) MONTHLY COMPENSATION BASE.—

9 "(A) IN GENERAL.—For purposes of subdivision
10 (1), the term 'monthly compensation base' means the
11 amount—

12 "(i) of \$400 for calendar months before Jan-
13 uary 1, 1984;

14 "(ii) of \$600 for calendar months after De-
15 cember 31, 1983 and before January 1, 1988;
16 and

17 "(iii) computed under subparagraph (B) for
18 months after December 31, 1987.

19 "(B) COMPUTATION.—

20 "(i) IN GENERAL.—The amount of the
21 monthly compensation base for each calendar year
22 beginning after December 31, 1987, is the greater
23 of—

24 "(I) \$600; or

1 “(II) the amount, as rounded under
2 clause (iii) if applicable, computed under the
3 formula:

$$B=600 \left(1 + \frac{A-37,800}{56,700} \right)$$

4 “(ii) MEANING OF SYMBOLS.—For the pur-
5 poses of the formula in clause (i)—

6 “(I) ‘B’ is the dollar amount of the
7 monthly compensation base; and

8 “(II) ‘A’ is the amount of the applicable
9 base with respect to tier 1 taxes, for the cal-
10 endar year for which the monthly compensa-
11 tion base is being computed, as determined
12 under section 3231(e)(2) of the Internal Rev-
13 enue Code of 1986.

14 “(iii) ROUNDING RULE.—If the monthly
15 compensation base computed under this formula is
16 not a multiple of \$5, it shall be rounded to the
17 nearest multiple of \$5, with such rounding being
18 upward in the event the amount computed is equi-
19 distant between two multiples of \$5.”.

20 (b) CONFORMING AMENDMENT WITH RESPECT TO
21 SUBSIDIARY REMUNERATION RULE.—Section 1(k) is
22 amended by striking out “\$1,500” and inserting in lieu
23 thereof “an amount that is equal to 5 times the monthly com-
24 pensation base for months in such base year as computed
25 under section 1(i) of this Act”.

1 (c) CONFORMING AMENDMENT WITH RESPECT TO
2 LIMITATION ON TAKING ACCOUNT OF MONEY REMUNERA-
3 TION.—Section 2(c) is amended by striking out “not in
4 excess of \$775 in any month shall be taken into account:”
5 and inserting in lieu thereof “shall be taken into account that
6 is not in excess of \$775 in any month before 1988 and, in
7 any month in a base year after 1987, is not in excess of an
8 amount that bears the same ratio to \$775 as the monthly
9 compensation base for that year as computed under section
10 1(i) of this Act bears to \$600:”.

11 (d) CONFORMING AMENDMENTS WITH RESPECT TO
12 REQUIRED COMPENSATION AMOUNT.—Section 4(a-2)(i)(A)
13 is amended—

14 (1) by striking out “\$1,500” and inserting in lieu
15 thereof “\$3,000”; and

16 (2) by striking out the semicolon at the end and
17 inserting in lieu thereof “and before 1988 or, if any
18 part of such compensation is paid in a calendar year
19 after 1987, not less than an amount that is equal to 5
20 times the monthly compensation base for months in
21 such calendar year, as computed under section 1(i) of
22 this Act;”.

23 (e) DUTY OF BOARD TO MAKE CERTAIN COMPUTA-
24 TIONS.—Section 12 is amended by adding at the end the
25 following new subsection:

1 “(r) DUTY OF BOARD TO MAKE CERTAIN COMPUTA-
2 TIONS.—

3 “(1) COMPENSATION BASE.—On or before De-
4 cember 1, 1987, and on or before December 1 of each
5 year thereafter, the Board shall compute—

6 “(A) in accordance with section 1(i), the
7 monthly compensation base which shall be appli-
8 cable with respect to months in the next succeed-
9 ing calendar year; and

10 “(B) the amounts described in section 1(k),
11 section 2(c), section 3, and section 4(a-2)(i)(A)
12 that are related to changes in the monthly com-
13 pensation base.

14 “(2) MAXIMUM DAILY BENEFIT RATE.—On or
15 before June 1, 1988, and on or before June 1 of each
16 year thereafter, the Board shall compute in accordance
17 with section 2(a)(3) the maximum daily benefit rate
18 which shall be applicable with respect to days of unem-
19 ployment and days of sickness in registration periods
20 beginning after June 30 of that year.

21 “(3) NOTICE IN FEDERAL REGISTER AND TO EM-
22 PLOYEES.—Not later than 10 days after each compu-
23 tation made under this paragraph, the Board shall pub-
24 lish notice in the Federal Register and shall notify

1 each employer and employee representative of the
2 amount so computed.”.

3 (f) **EFFECTIVE DATE.**—The amendments made by this
4 section shall take effect upon the date of the enactment of
5 this Act.

6 **SEC. 102. CONTRIBUTION ADJUSTMENTS.**

7 (a)(1) **EMPLOYER CONTRIBUTIONS AND EXPERIENCE**
8 **RATING.**—Section 8 is amended by striking out “(a) Every
9 employer” and all that follows through the end of subsection
10 (a) and inserting in lieu thereof the following:

11 “(a) **EMPLOYER CONTRIBUTION.**—

12 “(1) **IN GENERAL.**—

13 “(A) **GENERAL RULE.**—

14 “(i) **CONTRIBUTION RATE GENERAL-**
15 **LY.**—Every employer shall pay a contribu-
16 tion, with respect to having employees in his
17 service, equal to the percentage determined
18 under subparagraph (B), (C), or (D), which-
19 ever is applicable, of so much of the compen-
20 sation paid in any calendar month by such
21 employer to any employee as is not in excess
22 of the monthly compensation base for that
23 month as computed under section 1(i). —

24 “(ii) **MULTIPLE EMPLOYER LIMITA-**
25 **TION.**— If compensation is paid to an em-

1 employee by more than one employer in any
2 calendar month—

3 “(I) the contributions required by
4 this subsection shall not apply to any
5 amount of the aggregate compensation
6 paid to such employee by all such em-
7 ployers in such calendar month which is
8 in excess of such monthly compensation
9 base; and

10 “(II) each employer (other than a
11 subordinate unit of a national-railway-
12 labor-organization employer) shall be
13 liable for that portion of the contribution
14 with respect to such compensation paid
15 by all such employers which the com-
16 pensation paid by him to such employee
17 bears to the total compensation paid in
18 such month by all such employers to
19 such employee.

20 In the event that the compensation paid by
21 such employers to the employee in such
22 month is less than such monthly compensa-
23 tion base, each subordinate unit of a nation-
24 al-railway-labor-organization employer shall
25 be liable for such portion of any additional

1 contribution as the compensation paid by
 2 such employer to such employee in such
 3 month bears to the total compensation paid
 4 by all such employers to such employee in
 5 such month.

6 “(B) TRANSITIONAL RULE.—

7 “(i) 1ST AND 2D CALENDAR YEARS.—

8 With respect to compensation paid in calen-
 9 dar years 1988 and 1989, the contribution
 10 rate shall be 8 percent.

11 “(ii) 3D CALENDAR YEAR.—With re-
 12 spect to compensation paid in calendar year
 13 1990, the contribution rate shall be the
 14 smaller of—

15 “(I) the maximum contribution
 16 limit computed under paragraph (20); or

17 “(II) the percentage computed pur-
 18 suant to the following formula:

$$R = \frac{2A + B}{3}$$

19 “(iii) 4TH CALENDAR YEAR.—With re-
 20 spect to compensation paid in calendar year
 21 1991, the contribution rate shall be the
 22 smaller of—

23 “(I) the maximum contribution
 24 limit computed under paragraph (20); or

1 “(II) the percentage computed pur-
2 suant to the following formula:

$$R = \frac{A + 2C}{3}$$

3 “(iv) MEANING OF SYMBOLS.—For pur-
4 poses of the formulas in clauses (ii) and
5 (iii)—

6 “(I) ‘R’ is the applicable contribu-
7 tion rate expressed as a percentage for
8 months in the calendar year;

9 “(II) ‘A’ is the contribution rate
10 determined under clause (i);

11 “(III) ‘B’ is the percentage rate
12 for the employer, as determined under
13 subparagraph (C), for calendar year
14 1990; and

15 “(IV) ‘C’ is the percentage rate for
16 the employer, as determined under sub-
17 paragraph (C), for calendar year 1991.

18 “(v) SPECIAL RULE FOR CERTAIN
19 COMPUTATIONS.—For purposes of comput-
20 ing B and C in such formulas—

21 “(I) the percentage rate computed
22 under subparagraph (C), if more than
23 the maximum contribution limit comput-

1 ed under paragraph (20) shall not be re-
2 duced to that limit; and

3 "(II) any computations which
4 under subparagraph (C) are to be made
5 on the basis of a 4-quarter or a 12-
6 quarter period ending on a given
7 June 30 shall be made on the basis of a
8 period beginning on January 1, 1989,
9 and ending on that June 30, and the
10 amount so computed shall be increased
11 to an amount that bears the same ratio
12 to the amount so computed as 4 or 12,
13 as appropriate, bears to the number of
14 calendar quarters in the period on
15 which the computation was based.

16 "(C) EXPERIENCE-RATED CONTRIBU-
17 TIONS.—With respect to compensation paid in a
18 calendar year that begins after December 31,
19 1991, the contribution rate for each employer
20 shall be determined as follows:

21 "(i) STEP 1.—Compute the employer's
22 benefit ratio as of the preceding June 30 to
23 4 decimal points in accordance with para-
24 graph (2).

1 “(ii) STEP 2.—Subtract the employer’s
2 reserve ratio as of the preceding June 30 as
3 computed to 4 decimal points in accordance
4 with paragraph (4).

5 “(iii) STEP 3.—Subtract the pooled
6 credit ratio for the calendar year, if any, as
7 computed to 4 decimal points in accordance
8 with paragraph (12).

9 “(iv) STEP 4.—Multiply by 100 the
10 total arrived at under the steps set forth in
11 clauses (i) through (iii) so as to obtain a per-
12 centage rate, which shall be rounded to the
13 nearest 100th of 1 percent. If the total ar-
14 rived at under such steps is 0 or less than 0,
15 the percentage rate as so computed shall
16 be 0.

17 “(v) STEP 5.—Add 0.65 to the percent-
18 age rate arrived at under clause (iv), repre-
19 senting the portion of the employer’s contri-
20 bution which is to be deposited to the credit
21 of the fund under subsection (i).

22 “(vi) STEP 6.—Unless a surtax is in
23 effect with respect to such calendar year
24 under section 3321(c)(1)(B) of the Internal
25 Revenue Code of 1986, add the surcharge

1 rate for the calendar year, if any, as comput-
2 ed under paragraph (14).

3 "(vii) STEP 7.—Add the pooled charge
4 ratio for the calendar year, if any, as com-
5 puted to 4 decimal points under paragraph
6 (13) and multiplied by 100.

7 "(viii) STEP 8.—Reduce the percentage
8 rate computed in accordance with the pre-
9 ceding steps to the maximum contribution
10 limit computed under paragraph (20), if such
11 rate is higher than such limit. The rate com-
12 puted in accordance with the preceding
13 steps, after any reduction under this clause,
14 is the contribution rate.

15 "(D) NEW-EMPLOYER CONTRIBUTION
16 RATES.—Notwithstanding subparagraphs (B) and
17 (C), the contribution rate applicable to a new em-
18 ployer who does not become subject to this Act
19 until after December 31, 1988, shall be deter-
20 mined as follows:

21 "(i) 1ST CALENDAR YEAR.—With re-
22 spect to compensation paid in calendar
23 months before the end of the first full calen-
24 dar year in which the employer is subject to
25 this Act, the contribution rate shall be the

1 average contribution rate paid by all employ-
 2 ers during the 3 calendar years preceding the
 3 calendar year before the calendar year in
 4 which the compensation is paid. The average
 5 contribution rate shall be determined—

6 “(I) by dividing the aggregate con-
 7 tributions paid by all employers under
 8 this subsection in those 3 calendar years
 9 by the aggregate compensation with re-
 10 spect to which such contributions were
 11 paid; and

12 “(II) by multiplying the resulting
 13 ratio as computed to 4 decimal points
 14 by 100.

15 “(ii) 2D CALENDAR YEAR.—With re-
 16 spect to compensation paid in calendar
 17 months in the next calendar year, the contri-
 18 bution rate shall be the smaller of—

19 “(I) the maximum contribution
 20 limit computed under paragraph (20); or

21 “(II) the percentage rate computed
 22 pursuant to the following formula:

$$R = \frac{2(A2) + B}{3}$$

23 “(iii) 3D CALENDAR YEAR.—With re-
 24 spect to compensation paid in calendar

months in the third full calendar year in which the employer is subject to the coverage of this Act, the contribution rate shall be the smaller of—

“(I) the maximum contribution limit computed under paragraph (20); or

“(II) the percentage rate computed pursuant to the following formula:

$$R = \frac{A3 + 2C}{3}$$

“(iv) SUBSEQUENT CALENDAR YEARS.—With respect to all calendar months in calendar years subsequent to that calendar year, the contribution rate shall be determined under subparagraph (C).

“(v) MEANING OF SYMBOLS.—For purposes of the formulas in clauses (ii) and (iii)—

“(I) ‘R’ is the applicable contribution rate expressed as a percentage for months in the calendar year;

“(II) ‘A1’ is the contribution rate determined under clause (i) for such employer’s first full calendar year;

“(III) ‘A2’ is the contribution rate which would have been determined

1 under clause (i) if the employer's second
2 calendar year had been its first full cal-
3 endar year;

4 "(IV) 'A3' is the contribution rate
5 which would have been determined
6 under clause (i) if the employer's third
7 calendar year had been such employer's
8 first full calendar year;

9 "(V) 'B' is the contribution rate for
10 the employer as determined under sub-
11 paragraph (C) for the employer's second
12 full calendar year; and

13 "(VI) 'C' is the contribution rate
14 for the employer as determined under
15 subparagraph (C) for the employer's
16 third full calendar year.

17 "(vi) SPECIAL RULE FOR CERTAIN
18 COMPUTATIONS.—For purposes of comput-
19 ing B and C in such formulas—

20 "(I) the percentage rate computed
21 under subparagraph (C), shall not be re-
22 duced under clause (viii) of that sub-
23 paragraph; and

24 "(II) any computations which
25 under subparagraph (C) are to be made

1 on the basis of a 4-quarter or 12-quarter
2 ter period ending on a given June 30
3 shall be made on the basis of a period
4 commencing with the first day of the
5 first calendar quarter that begins after
6 the date on which the employer first
7 commenced paying compensation sub-
8 ject to this Act and ending on that June
9 30, and the amount so computed shall
10 be increased to an amount that bears
11 the same ratio to the amount so com-
12 puted as 4 or 12, as appropriate, bears
13 to the number of calendar quarters in
14 the period on which the computation
15 was based.

16 "(2) BENEFIT RATIO.—An employer's benefit
17 ratio as of any given June 30 shall be determined by
18 dividing all benefits charged to the employer under
19 paragraph (15) during the 12 calendar quarters ending
20 on such June 30 by the employer's 3-year compensa-
21 tion base as of such June 30 as computed under para-
22 graph (3).

23 "(3) 3-YEAR COMPENSATION BASE.—An employ-
24 er's 3-year compensation base as of any given June 30
25 is the aggregate compensation with respect to which

1 contributions were paid by the employer under this
2 subsection in the 12 calendar quarters ending on such
3 June 30.

4 “(4) RESERVE RATIO.—An employer’s reserve
5 ratio as of any given June 30 shall be computed by
6 dividing the employer’s reserve balance as of such
7 June 30, as computed under paragraph (6), by that
8 employer’s 1-year compensation base as of such
9 June 30, as computed under paragraph (5). The em-
10 ployer’s reserve ratio may be either a positive or a
11 negative figure, depending upon whether the employ-
12 er’s reserve balance is a positive or negative figure.

13 “(5) 1-YEAR COMPENSATION BASE.—An employ-
14 er’s 1-year compensation base as of any given June 30
15 is the aggregate compensation with respect to which
16 contributions were paid by the employer under this
17 subsection in the 4 calendar quarters ending on such
18 June 30.

19 “(6) RESERVE BALANCE.—An employer’s reserve
20 balance as of any given June 30 shall be determined
21 by subtracting the employer’s cumulative benefit bal-
22 ance as of such June 30, computed under paragraph
23 (7), from the employer’s net cumulative contribution
24 balance as of such June 30, computed under paragraph
25 (8). An employer’s reserve balance may be either posi-

1 tive or negative, depending upon whether or not that
2 employer's net cumulative contribution balance exceeds
3 the employer's cumulative benefit balance.

4 “(7) CUMULATIVE BENEFIT BALANCE.—An em-
5 ployer's cumulative benefit balance as of any given
6 June 30 shall be determined by adding—

7 “(A) the net amount of the benefits charged
8 to the employer under paragraph (15) on or after
9 January 1, 1989; and

10 “(B) the cumulative amount of the employ-
11 er's unallocated charges for the same period, if
12 any, as computed under paragraph (9).

13 “(8) NET CUMULATIVE CONTRIBUTION BAL-
14 ANCE.—An employer's net cumulative contribution
15 balance as of any given June 30 shall be determined as
16 follows:

17 “(A) STEP 1.—Compute the sum of

18 “(i) all contributions paid by the em-
19 ployer pursuant to this subsection;

20 “(ii) all taxes paid by the employer pur-
21 suant to section 3321(c)(1)(B) of the Internal
22 Revenue Code of 1986;

23 “(iii) any taxes paid by the employer
24 pursuant to section 3321(c)(1)(A) of the In-
25 ternal Revenue Code of 1986 (after the out-

1 standing balance of loans made under section
2 10(d) before October 1, 1985, plus interest,
3 have been paid);
4 on or after January 1, 1989.

5 "(B) STEP 2.—Subtract an amount equal to
6 the amount of such contributions deposited to the
7 credit of the fund under subsection (i).

8 "(C) STEP 3.—Add an amount equal to the
9 aggregate amount by which such contributions
10 were reduced in prior calendar years as a result of
11 pooled credits, if any, under paragraph (1)(C)(iii).

12 "(9) UNALLOCATED CHARGE.—An employer's
13 unallocated charge as of any given June 30 is the
14 amount that as of such June 30 bears the same ratio
15 to the system unallocated charge balance, computed
16 under paragraph (10), as the employer's 1-year com-
17 pensation base, computed under paragraph (5), bears to
18 the system compensation base computed under para-
19 graph (11).

20 "(10) SYSTEM UNALLOCATED CHARGE BAL-
21 ANCE.—The system unallocated charge balance as of
22 any given June 30 shall be determined as follows:

23 "(A) STEP 1.—Compute the aggregate
24 amount of all interest paid by the account on
25 loans from the Railroad Retirement Account after

1 September 30, 1985, pursuant to section 10(d),
2 during the 4 calendar quarters ending on that
3 June 30.

4 “(B) STEP 2.—Add the aggregate amount of
5 any additions to the system unallocated charge
6 balance specified in paragraphs (15) and (16),
7 during that period.

8 “(C) STEP 3.—Add the aggregate amount of
9 any other expenditures by the account during that
10 period not chargeable to any individual employer
11 under paragraph (15) or to the fund under sec-
12 tion 11.

13 “(D) STEP 4.—Subtract the aggregate
14 amount of all income to the account, under sec-
15 tion 10(a)(iv) or section 10(a)(vii), during that
16 period.

17 “(E) STEP 5.—Subtract the aggregate
18 amount of all transfers to the account, pursuant to
19 section 11(d), during that period.

20 “(F) STEP 6.—Subtract the aggregate
21 amount of all other income and receipts of the ac-
22 count, during that period, which are not assigned
23 to individual employer balances.

24 “(G) STEP 7.—Subtract the net cumulative
25 contribution balance of each employer whose bal-

1 ance has been cancelled pursuant to paragraph
2 (16), during that period, calculated as of the date
3 of such cancellation.

4 “(11) **SYSTEM COMPENSATION BASE.**—The
5 system compensation base as of any given June 30
6 shall be determined by adding together the amounts of
7 the 1-year compensation bases of all employers and
8 employee representatives subject to this Act, computed
9 in accordance with paragraph (5), as of such June 30.

10 “(12) **POOLED CREDIT RATIO.**—The pooled credit
11 ratio, if any, for a calendar year shall be determined as
12 follows:

13 “(A) **STEP 1.**—Compute the balance to the
14 credit of the account as of the close of business on
15 the preceding June 30, including any amounts in
16 the account attributable to loans made under sec-
17 tion 10(d) before October 1, 1985, but disregard-
18 ing the obligation to repay such loans and interest
19 thereon. There will be a pooled credit ratio for
20 the calendar year only if that balance is in excess
21 of the greater of \$250,000,000 or of the amount
22 that bears the same ratio to \$250,000,000 as the
23 system compensation base as of that June 30
24 bears to the system compensation base as of

1 June 30, 1990, as computed in accordance with
2 paragraph (11).

3 “(B) STEP 2.—If there is such an excess
4 amount, divide that excess amount by the system
5 compensation base as of the June 30 preceding
6 the calendar year. The result is the pooled credit
7 ratio for the calendar year.

8 “(13) POOLED CHARGE RATIO.—The pooled
9 charge ratio, if any, for a calendar year shall be deter-
10 mined as follows:

11 “(A) STEP 1.—With respect to each employ-
12 er whose contribution rate for that calendar year
13 as computed through step 6 under paragraph
14 (1)(C) was greater than the maximum contribution
15 limit computed under paragraph (20), multiply the
16 employer's 1-year compensation base as of the
17 preceding June 30, as computed in accordance
18 with paragraph (5), by the difference between—

19 “(i) the percentage rate determined
20 under subparagraph (B), (C), or (D) of para-
21 graph (1) before the reduction to the maxi-
22 mum contribution limit; and

23 “(ii) the maximum contribution limit.

1 “(B) STEP 2.—Add the amounts arrived at
2 under step 1 so as to obtain an aggregate amount
3 for all such employers.

4 “(C) STEP 3.—For each employer whose
5 contribution rate as computed through step 3
6 under paragraph (1)(C) was less than 0, the per-
7 centage rate by which such employer's rate was
8 raised in order to bring that rate to 0 shall be
9 multiplied by that employer's 1-year compensation
10 base as of the preceding June 30. Subtract the
11 total of the amounts computed under the preced-
12 ing sentence for all employers from the amount
13 arrived at in step 2.

14 “(D) STEP 4.—Divide the aggregate amount
15 arrived at under step 3 by the system compensa-
16 tion base as of the preceding June 30 as comput-
17 ed under paragraph (11) minus the one-year com-
18 pensation base of those employers whose rates
19 computed through step 6 of paragraph (1)(C) ex-
20 ceeded the maximum contribution rate computed
21 under paragraph (20). The result is the pooled
22 charge ratio for the calendar year.

23 “(14) SURCHARGE RATE.—The surcharge rate
24 for a calendar year, if any, shall be determined as
25 follows:

1 “(A) STEP 1.—Compute the balance to the
2 credit of the account as of the close of business on
3 the preceding June 30, including any amounts in
4 the account attributable to loans made under sec-
5 tion 10(d) before October 1, 1985, but disregard-
6 ing the obligation to repay such loans and interest
7 thereon. There will be a surcharge rate for the
8 calendar year only if that balance is less than the
9 greater of \$100,000,000 or of the amount that
10 bears the same ratio to \$100,000,000 as the
11 system compensation base as of that June 30
12 bears to the system compensation base as of
13 June 30, 1990, as computed in accordance with
14 paragraph (11).

15 “(B) STEP 2.—(i) If the balance to the credit
16 of the account is less than the greater of the
17 amounts referred to in the 2nd sentence of step 1
18 but is equal to or more than the greater of
19 \$50,000,000 or of the amount that bears the
20 same ratio to \$50,000,000 as the system compen-
21 sation base as of that June 30 bears to the system
22 compensation base as of June 30, 1990, then the
23 surcharge rate for the calendar year shall be 1.5
24 percent.

1 “(ii) If the balance to the credit of the ac-
2 count is less than the greater of the amounts re-
3 ferred to in the clause (i) then the surcharge rate
4 for the calendar year shall be 2.5 percent.

5 “(15) CHARGEABLE BENEFITS.—

6 “(A) IN GENERAL.—Beginning January 1,
7 1989, all benefits paid to an employee for days of
8 unemployment or days of sickness shall be
9 charged to that employee's base year employer by
10 adding amounts equal to the amounts of such ben-
11 efits to the employer's cumulative benefit balance
12 except that benefits paid by reason of strikes or
13 work stoppages growing out of labor disputes
14 shall not be added to the employer's cumulative
15 benefit balance but instead shall be added to the
16 system unallocated charge balance.

17 “(B) ADJUSTMENTS.—A sum equal to each
18 amount realized in recovery for overpayment, er-
19 roneous payment, or reimbursement of benefits
20 and credited to the account pursuant to section
21 10(a)(v) or 10(a)(viii) shall be subtracted from the
22 cumulative benefit balances of the employers of
23 the employees to whom such an amount was paid
24 as a benefit in the proportion to the amount by
25 which each such employer's cumulative benefit

1 balance was increased as a result of the payment
2 of the benefit.

3 **"(C) MULTIPLE EMPLOYERS.—**

4 **"(i) IN GENERAL.—**All benefits paid to
5 an employee who had more than 1 base-year
6 employer shall be charged to the cumulative
7 benefit balances of the employee's base year
8 employers—

9 **"(I)** in reverse chronological order
10 of the employee's employment with
11 each such employer in the base year if
12 the employer at the time of the claim
13 was the last base year employer, and
14 the amount charged to each employer
15 shall not exceed the compensation paid
16 by that employer to the employee in the
17 base year; and

18 **"(II)** in all other cases, in the
19 same ratio as the compensation paid to
20 such employee by the employer bears to
21 the total of such compensation paid to
22 such employee by all such employers in
23 the base year.

24 **"(ii) SPECIAL RULE FOR EMPLOYER**
25 **WITH CANCELLED BALANCES.—**All benefits

1 chargeable under this subparagraph to an
2 employer for which the Board has cancelled
3 balances under paragraph (16) shall be added
4 to the system unallocated charge balance.

5 “(16) DEFUNCT EMPLOYER.—Whenever the
6 Board determines, pursuant to such regulations as the
7 Board may prescribe, that an employer has permanent-
8 ly ceased to pay compensation with respect to which
9 contributions are payable pursuant to this subsection,
10 the Board shall, effective on the date of the Board’s
11 determination, transfer the employer’s net cumulative
12 contribution balance as a subtraction from, and cumula-
13 tive benefit balance as an addition to, the system unal-
14 located charge balance and cancel all other accumula-
15 tions of the employer.

16 “(17) INDIVIDUAL EMPLOYER RECORD.—

17 “(A) IN GENERAL.—As of January 1, 1989,
18 the Board shall commence maintaining an individ-
19 ual employer record with respect to each employ-
20 er, and the records necessary to determine pooled
21 charges, pooled credits and unallocated charge
22 balances for the system. Whenever a new employ-
23 er begins paying compensation with respect to
24 which contributions are payable pursuant to this

1 subsection, the Board shall establish and maintain
2 an individual employer record for such employer.

3 "(B) DEFINITION.—As used in this para-
4 graph, the term 'individual employer record'
5 means a record of an individual employer's benefit
6 ratio, reserve ratio, 1-year compensation base, 3-
7 year compensation base, unallocated charge, re-
8 serve balance, net cumulative contribution bal-
9 ance, and cumulative benefit balance.

10 "(18) JOINT EMPLOYER RECORDS.—Pursuant to
11 regulations prescribed by the Board, the Board may
12 allow 2 or more employers, upon application, to estab-
13 lish and maintain, or to discontinue, a joint individual
14 employer record for such employers as though such
15 joint record constituted a single employer's individual
16 employer record.

17 "(19) MERGERS, CONSOLIDATIONS, OR OTHER
18 CHANGES IN EMPLOYER IDENTITY.—

19 "(A) WITH OTHER EMPLOYERS.—In the
20 event of a merger, consolidation, unification, or
21 reorganization in which an employer combines
22 with another employer and the combination en-
23 tails no partitioning of the property of the employ-
24 er, the individual employer records of the 2 em-
25 ployers shall be combined into a joint individual

1 employer record if the parties request such joint
2 treatment pursuant to paragraph (18) or if the
3 Board otherwise determines, pursuant to regula-
4 tions prescribed by the Board, that such joint
5 treatment is desirable.

6 "(B) WITH NONEMPLOYERS.—In the event
7 of a merger, consolidation, unification, or reorga-
8 nization in which an employer combines with an-
9 other entity that is not an employer, the employ-
10 er's individual employer record shall attach to the
11 combined entity.

12 "(C) SALE OF ASSETS.—In the event prop-
13 erty of an employer is sold or transferred to an-
14 other employer or other entity, or is partitioned
15 among 2 or more employers or entities, the cumu-
16 lative benefit balance, net cumulative contribution
17 balance, 1-year compensation base, and 3-year
18 compensation base of the employer shall be pro-
19 rated among the employers which receive the
20 property, including any entities which become em-
21 ployers by virtue of such transfer or partition, in
22 such equitable manner as the Board by regulation
23 shall prescribe.

24 "(D) REINCORPORATION.—The cumulative
25 benefit balance, net cumulative contribution bal-

1 ance, 1-year compensation base, and 3-year com-
2 pensation base of an employer that reincorporates
3 or otherwise alters its corporate identity in a
4 transaction not involving a merger, consolidation,
5 or unification shall attach to the reincorporated or
6 altered entity.

7 “(E) ABANDONMENT.—If an employer aban-
8 dons property or discontinues service but contin-
9 ues to operate as an employer, the employer’s in-
10 dividual employer record shall continue to be cal-
11 culated as provided in this subsection without ret-
12 roactive adjustment.

13 “(20) MAXIMUM CONTRIBUTION LIMIT.—The
14 maximum contribution limit with respect to a calendar
15 year is 12 percent, unless a surtax is in effect with re-
16 spect to that calendar year under section 3321(c)(1)(B)
17 of the Internal Revenue Code of 1986. If such a
18 surtax is in effect, the maximum contribution limit with
19 respect to that calendar year is 9 percent.

20 “(21) SPECIAL RULES FOR CERTAIN COMPUTA-
21 TIONS UNDER PARAGRAPH (1)(C).—(A) Any computa-
22 tion that is to be made under paragraph (1)(C) on the
23 basis of a 12-quarter period ending on a given June 30
24 shall be made on the basis of a period—

25 “(i) beginning on the later of—

1 “(I) January 1, 1989;

2 “(II) the first day of the first calendar
3 quarter that begins after the date on which
4 the employer first began to pay compensation
5 subject to this Act; or

6 “(III) July 1 of the third calendar year
7 preceding that June 30; and

8 “(ii) ending on that June 30.

9 “(B) The amount computed under subparagraph
10 (A) shall be increased to an amount that bears the
11 same ratio to the amount so computed as 12 bears to
12 the number of calendar quarters on which the compu-
13 tation is based.”.

14 (b) EMPLOYEE REPRESENTATIVE CONTRIBUTION.—

15 Subsection (b) of section 8 is amended to read as follows:

16 “(b) EMPLOYEE REPRESENTATIVE CONTRIBUTION.—

17 Each employee representative shall pay a contribution with
18 respect to so much of the compensation paid to him for serv-
19 ices performed as an employee representative as is not in
20 excess of the monthly compensation base computed in ac-
21 cordance with section 1(i), at a rate which shall be deter-
22 mined under subsection (a) in the same manner and with the
23 same effect as if the employee organization by which such
24 employee representative is employed were an employer as
25 defined in this Act.”.

1 (c) EXTENSION OF REMEDIES.—Section 8(h) is amend-
2 ed by adding at the end the following: “The remedies avail-
3 able under the first sentence of this subsection for an employ-
4 er or employee representative who contests the amount of
5 contributions payable by him shall also apply with respect to
6 a contention that the contribution rate determined by the
7 Board under subsection (a) or (b) to be applicable to such
8 employer or employee representative is inaccurate or other-
9 wise improper.”.

10 (d) BOARD PROCLAMATION OF BALANCE.—Section 8
11 is amended—

12 (1) by redesignating subsections (c) through (h) as
13 subsections (f) through (k), respectively; and

14 (2) by inserting after subsection (b) the following
15 new subsections:

16 “(c) BOARD PROCLAMATION OF BALANCE.—

17 “(1) IN GENERAL.—Not later than October 15,
18 1989, and October 15 of each year thereafter the
19 Board shall proclaim—

20 “(A) the balance to the credit of the account
21 as of the preceding June 30 for purposes of para-
22 graphs (12) and (14) of subsection (a);

23 “(B) the balance of any advances to the ac-
24 count under section 10(d) after September 30,
25 1985, that has not been repaid with interest as

1 provided in such section as of September 30 of
2 that year;

3 "(C) the system compensation base as of that
4 June 30 as computed in accordance with para-
5 graph (11) of that subsection;

6 "(D) the system unallocated charge balance
7 as of that June 30, as computed in accordance
8 with paragraph (10) of that subsection; and

9 "(E) the pooled credit ratio, the pooled
10 charge ratio, and the surcharge rate, if any, as
11 determined under paragraph (12), (13), or (14) of
12 that subsection and applicable in the following
13 calendar year.

14 "(2) PUBLICATION OF NOTICE.—As soon as is
15 practicable after such proclamation, the Board shall
16 publish notice in the Federal Register of the amounts
17 so determined and proclaimed.

18 "(d) NOTIFICATIONS BY BOARD.—(1) Not later than
19 the last day of any calendar quarter that begins after
20 March 31, 1989, the Board shall notify each employer and
21 employee representative of its net cumulative contribution
22 balance and cumulative benefit balance as of the end of the
23 preceding calendar quarter, as computed in accordance with
24 paragraphs (7) and (8) of subsection (a) as of the last day of

1 such preceding calendar quarter rather than as of a given
2 June 30 if such last day is not a June 30.

3 “(2) Not later than October 15, 1989, and October 15 of
4 each year thereafter, the Board shall notify each employer
5 and employee representative of its benefit ratio, reserve ratio,
6 1-year compensation base, 3-year compensation base, unallo-
7 cated charge, and reserve balance as of the preceding
8 June 30 as computed in accordance with paragraphs (2), (3),
9 (4), (5), (6), and (9) of subsection (a), and of the contribution
10 rate applicable to the employer or employee representative in
11 the following calendar year as computed under paragraphs
12 (1) (B), (C), or (D) of that subsection.

13 “(e) INFORMATION TO VERIFY ACCURACY TO BE
14 MADE AVAILABLE.—Notwithstanding any other provision of
15 law, upon request by an employer or employee representa-
16 tive, the Board shall make available to such employer or em-
17 ployee representative any information available to the Board
18 which may be necessary to verify the accuracy of a contribu-
19 tion rate determined by the Board to be applicable to such
20 employer or employee representative, or of any component of
21 that contribution rate including the accuracy of the employ-
22 er's individual employer record, upon payment by such em-
23 ployer or employee representative to the Board of the cost
24 incurred by the Board in making such information available.

1 The amounts so paid to the Board shall be credited to and
2 deposited in the fund.”.

3 (e) **EFFECTIVE DATE.**—The amendments made by this
4 section shall take effect upon the date of the enactment of
5 this Act.

6 **SEC. 103. ADMINISTRATIVE EXPENSES.**

7 (a) **CHANGE IN PERCENTAGE TO BE DEPOSITED IN**
8 **FUND.**—Section 8(i), as so redesignated by section 102(d), is
9 amended by striking out “0.5” and inserting in lieu
10 thereof “0.65”.

11 (b) **CONFORMING AMENDMENTS.**—(1) Section 10(a) is
12 amended by striking out “0.5” and inserting in lieu
13 thereof “0.65”.

14 (2) Section 11(a) is amended by striking out “0.5” and
15 inserting in lieu thereof “0.65”.

16 (c) **EFFECTIVE DATE.**—The amendments made by this
17 section shall apply with respect to compensation paid in
18 months beginning after September 30, 1987.

19 **SEC. 104. NOTIFICATION TO EMPLOYER.**

20 (a) **IN CONNECTION WITH CLAIM.**—Section 5(b) of the
21 Railroad Unemployment Insurance Act (45 U.S.C. 355(b)) is
22 amended by adding at the end thereof the following: “When
23 a claim for benefits is filed with the Board, the Board shall
24 provide notice of such claim to the claimant’s base-year em-
25 ployer or employers and afford such employer or employers

1 an opportunity to submit information relevant to the claim
2 before making an initial determination on the claim. When
3 the Board initially determines to pay benefits to a claimant
4 under this Act, the Board shall provide notice of such
5 determination to the claimant's base-year employer or
6 employers."

7 (b) IN CONNECTION WITH ADMINISTRATIVE
8 REVIEW.—Section 5(c) of the Railroad Unemployment In-
9 surance Act (45 U.S.C. 355(c)) is amended—

10 (1) by inserting "(1)" after "(c)";

11 (2) by inserting at the end of the first paragraph
12 the following: "In any such case the Board or the
13 person or reviewing body so established or assigned
14 shall, by publication or otherwise, notify all parties
15 properly interested of their right to participate in the
16 hearing and of the time and place of the hearing.";

17 (3) by inserting "(2)" at the beginning of the
18 second paragraph;

19 (4) by inserting after the second paragraph the
20 following:

21 "(3) Any base-year employer of a claimant whose claim
22 for benefits has been granted in whole or in part, either in an
23 initial determination with respect thereto or in a determina-
24 tion after a hearing pursuant to paragraph (1), and who con-
25 tends that the determination is erroneous for a reason or rea-

1 sons other than a reason that is reviewable under paragraph
2 (4), may appeal to the Board for review of such determina-
3 tion. Despite such an appeal, the benefits awarded shall be
4 paid to such claimant, subject to recovery by the Board if and
5 to the extent found on the appeal to have been erroneously
6 awarded. The Board shall take such action as is appropriate
7 to recover the amount of such benefits including if feasible
8 adjustment in subsequent payments pursuant to the first two
9 paragraphs of section 2(d) of this Act. Upon an appeal, the
10 Board shall review the determination appealed from and for
11 such review may designate one of its officers or employees to
12 receive evidence and report to the Board thereof together
13 with recommendations. In any such case the Board or the
14 person so designated shall, by publication or otherwise, notify
15 all parties properly interested of their right to participate in
16 the proceeding and, if a hearing is to be held, of the time and
17 place of the hearing. At the request of any party properly
18 interested the Board shall provide for a hearing, and may
19 provide for a hearing on its own motion. The Board shall
20 prescribe regulations governing the appeals provided for in
21 this paragraph and for decisions upon such appeal.”;

22 (5) by inserting “(4)” at the beginning of the third
23 paragraph;

24 (6) by inserting “(5)” at the beginning of the
25 fourth paragraph;

1 (7) by striking out "two" in the first sentence of
2 the fourth paragraph and inserting in lieu thereof
3 "three";

4 (8) by inserting before the final paragraph the fol-
5 lowing:

6 "(6) For purposes of this subsection and subsections (d)
7 and (f), any base-year employer of the claimant is a properly
8 interested party."; and

9 (9) by inserting "(7)" at the beginning of the final
10 paragraph.

11 (c) IN CONNECTION WITH JUDICIAL REVIEW.—Sec-
12 tion 5(f) of the Railroad Unemployment Insurance Act
13 (45 U.S.C. 355(f)) is amended—

14 (1) by inserting after "member," in the first sen-
15 tence "or any base-year employer of the claimant,";
16 and

17 (2) by inserting after the second sentence the fol-
18 lowing: "A copy of such petition also shall forthwith be
19 served upon any other properly interested party, and
20 such party shall be a party to the review proceeding.".

21 (d) CONFORMING AMENDMENTS WITH RESPECT TO
22 LIMITATION ON ADMINISTRATIVE DISCLOSURE.—Section
23 12(d) of the Railroad Unemployment Insurance Act (45
24 U.S.C. 362(d)) is amended—

1 (1) by striking out "and" where it appears before
2 "(iii)"; and

3 (2) by striking out the period at the end of the
4 first sentence and inserting in lieu thereof the follow-
5 ing: "; and (iv) the Board shall disclose to any base-
6 year employer of a claimant for benefits any informa-
7 tion, including information as to the claimant's identity,
8 that is necessary or appropriate to notify such employ-
9 er of the claim for benefits or to full and fair participa-
10 tion by such employer in an appeal, hearing, or other
11 proceeding relative to the claim pursuant to section 5
12 of this Act."

13 (e) CONFORMING AMENDMENT WITH RESPECT TO
14 COURT PROCEEDINGS LIMITATION.—Section 12(n) of the
15 Railroad Unemployment Insurance Act (45 U.S.C. 362(n)) is
16 amended by striking out "court" in the proviso to the second
17 paragraph.

18 (f) EFFECTIVE DATE.—The amendments made by this
19 section shall take effect on January 1, 1989.

20 **TITLE II—BENEFIT AND OTHER** 21 **ADJUSTMENTS**

22 **SEC. 201. WAITING PERIOD FOR BENEFITS AND BENEFIT IN-**
23 **CREASES.**

24 (a) IN GENERAL.—Section 2(a) of the Railroad Unem-
25 ployment Insurance Act (45 U.S.C. 352(a)) is amended—

1 (1) by inserting "(1)" after "(a)";

2 (2) by striking out "four during any registration
3 period:" in the first sentence and inserting in lieu
4 thereof "nine during the first registration period within
5 a benefit year in which the employee has more than
6 four days of unemployment and for each day of unem-
7 ployment in excess of four during any other registra-
8 tion period in the same benefit year:";

9 (3) in the second sentence, by striking out "ex-
10 cluding four days of sickness in any registration
11 period" and inserting in lieu thereof "excluding nine
12 days of sickness in the first registration period during a
13 benefit year and four days of sickness in any other reg-
14 istration period in the same benefit year";

15 (4) by inserting "(2)" at the beginning of the
16 second paragraph;

17 (5) by striking out "and" after "shall not exceed
18 \$24 per day of such unemployment or sickness" in the
19 second paragraph and inserting in lieu thereof a
20 comma;

21 (6) by inserting "but before July 1, 1987" after
22 "June 30, 1976," in the second paragraph;

23 (7) by striking out the period at the end of the
24 first sentence of the second paragraph and inserting in
25 lieu thereof ", that for registration periods beginning

1 after June 30, 1987, but before July 1, 1988, such
 2 amount shall not exceed \$30 per day of unemployment
 3 or sickness, and that for registration periods beginning
 4 after June 30, 1988, such amount shall not exceed the
 5 maximum daily benefit rate provided in paragraph (3)
 6 of this subsection.”;

7 (8) by inserting after the second paragraph the
 8 following new paragraph:

9 “(3)(A) The maximum daily benefit rate which the
 10 Board is required to compute under section 12(r)(2) shall be
 11 the amount computed pursuant to the following formula, but
 12 shall be not less than \$30:

$$BR=25 \left(1 + \frac{A-600}{900} \right)$$

13 “(B) For purposes of such formula—

14 “(i) ‘BR’ represents the maximum daily benefit
 15 rate; and

16 “(ii) ‘A’ represents the amount obtained by divid-
 17 ing the amount of the ‘applicable base’ with respect to
 18 tier 1 taxes as determined under section 3231(e)(2) of
 19 the Internal Revenue Code of 1986 for the calendar
 20 year in which the benefit year begins by 60, with this
 21 quotient being rounded down to the nearest multiple of
 22 \$100.

23 “(C) If the maximum daily benefit rate computed under
 24 such formula is not a multiple of \$1, it shall be rounded to
 25 the nearest multiple of \$1, with such rounding being upward

1 in the event the amount computed is equidistant between two
2 multiples of \$1."; and

3 (9) by inserting "(4)" at the beginning of the last
4 paragraph.

5 (b) EFFECTIVE DATES.—(1) Except as provided in
6 paragraph (2), the amendments made by subsection (a) shall
7 take effect on the date of the enactment of this Act.

8 (2) The amendments made by paragraphs (2) and (3) of
9 subsection (a) shall apply with respect to registration periods
10 beginning after June 30, 1987.

11 SEC. 202. QUALIFYING CONDITION.

12 (a) IN GENERAL.—Section 3 is amended to read as fol-
13 lows:

14 "QUALIFYING CONDITION

15 "SEC. 3. An employee is a qualified employee for the
16 purposes of this Act if the Board finds that—

17 "(1) such employee will have had compensation
18 with respect to each of not less than 6 months in the
19 base year; and

20 "(2) such employee's compensation (excluding
21 earnings in any month in excess of the monthly com-
22 pensation base provided in section 1(i)) in the base year
23 will not have been less than an amount equal to 5
24 times the monthly compensation base as provided in
25 section 1(i) with respect to the base year."

1 (b) **EFFECTIVE DATE.**—The amendment made by this
 2 section shall apply with respect to base years after 1985,
 3 except that an employee who as of the date of the enactment
 4 of this Act had received benefits on the basis of compensation
 5 and service in base year 1986 shall not be affected by this
 6 amendment until the end of the benefit year based on such
 7 compensation and service.

8 **SEC. 203. INCREASE IN MAXIMUM PERMITTED SUBSIDIARY**
 9 **REMUNERATION.**

10 (a) **IN GENERAL.**—The second paragraph of section
 11 1(k) of the Railroad Unemployment Insurance Act (45
 12 U.S.C. 351(k)) is amended by striking out “\$10” and insert-
 13 ing “\$15” in lieu thereof.

14 (b) **EFFECTIVE DATE.**—The amendment made by this
 15 section shall take effect on July 1, 1987.

16 **TITLE III—RETIREMENT ACT**
 17 **AMENDMENTS**

18 **SEC. 301. ADDITIONAL LUMP SUM PAYMENT IN CERTAIN**
 19 **CASES.**

20 Section 6 of the Railroad Retirement Act of 1974 is
 21 amended by adding at the end thereof the following new sub-
 22 section:

23 “(e)(1) Every individual who will have completed ten
 24 years of service at the time of his retirement or death, who
 25 will have received compensation in the nature of separation

1 or severance pay on or after January 1, 1985, and who
2 would have been credited with additional months of service
3 pursuant to section 3(i)(4) of this Act except for the fact that
4 such individual was not in an employment relation to one or
5 more employers nor an employee representative in such
6 months, shall, at the time his annuity under section 2(a)(1) of
7 this Act begins to accrue, be entitled to a lump sum in the
8 amount provided under subdivision (2) of this subsection. If
9 the full amount of a lump sum under this subsection cannot
10 be determined at the time an individual's annuity under sec-
11 tion 2(a)(1) begins to accrue, such lump sum shall be payable
12 at such time thereafter as such amount can be determined. If
13 an individual otherwise eligible for a lump sum under this
14 section dies before he becomes entitled to an annuity under
15 section 2(a)(1), or before he receives payment of such lump
16 sum, such lump sum shall be payable to the person, if any,
17 who is determined by the Board to be such individual's
18 widow or widower and who will not have died before receiv-
19 ing payment of such lump sum. If there be no such widow or
20 widower, such lump sum shall be payable to the children,
21 grandchildren, parents, brothers and sisters, or the estate of
22 the deceased individual in the same manner as if such lump
23 sum were a lump sum payable under subsection (c)(1) of this
24 section.

1 “(2) The lump sum provided under subdivision (1) of this
 2 subsection shall be in an amount equal to the product of (A)
 3 the compensation attributable to the additional months of
 4 service which would have been credited to the individual due
 5 to the receipt of payments in the nature of separation or sev-
 6 erance pay pursuant to section 3(i)(4) of this Act if such indi-
 7 vidual had remained in an employment relation to one or
 8 more employers or had continued to be an employee repre-
 9 sentative and (B) the rate of tax, or rates of tax, imposed on
 10 the compensation described in clause (A) of this subdivision
 11 by section 3201(b) of the Internal Revenue Code of 1986.”.

12 **SEC. 302. DELETION OF LAST PERSON SERVICE AS A DIS-**
 13 **QUALIFICATION.**

14 (a) **IN GENERAL.**—Section 2(e) of the Railroad Retire-
 15 ment Act of 1974 is amended—

16 (1)(A) in subdivision (1), by striking out “any
 17 person, whether or not”; and

18 (B) by striking out “(but with the” and all that
 19 follows through “political subdivision of a State”;

20 (2) in subdivision (2), by striking out “and of the
 21 person, or persons, by whom he was last employed”;
 22 and

23 (3) in subdivision (3), by striking out “or to the
 24 last person, or persons, by whom he was employed

1 prior to the date on which the annuity under subsec-
2 tion (a)(1) began to accrue”.

3 (b) DEDUCTION FOR WORK.—Section 2(f) of such Act
4 is amended by adding at the end thereof the following new
5 subdivision:

6 “(6)(A) Except as provided in subparagraph (B)—

7 “(i) that portion of the annuity for any month of
8 an individual as is computed under section 3(b) and as
9 adjusted under section 3(g), plus any supplemental
10 amount for such month under section 3(e), and that
11 portion of the annuity for any month of a spouse as is
12 computed under section 4(b) and as adjusted under sec-
13 tion 4(d), shall each be subject to a deduction of \$1 for
14 each \$2 of compensation received by such individual
15 from compensated service rendered in such month to
16 the last person, or persons, by whom such individual
17 was employed before the date on which the annuity of
18 such individual under subsection (a)(1) began to accrue;
19 and

20 “(ii) that portion of the annuity for any month of
21 a spouse as is computed under section 4(b) and as ad-
22 justed under section 4(d) shall be subject to a deduction
23 of \$1 for each \$2 of compensation received by such
24 spouse from compensated service rendered in such
25 month to the last person, or persons, by whom such

1 spouse was employed before the date on which the an-
2 nuity of such spouse under subsection (c)(1) began to
3 accrue.

4 “(B) Any deductions imposed by this subdivision for any
5 month shall not exceed 50 percent of the annuity amount for
6 such month to which such deductions apply.”.

7 (c) EFFECTIVE DATE.—The amendments made by this
8 section shall apply to annuities payable under the Railroad
9 Retirement Act of 1974 for months beginning after the date
10 of enactment of this Act.

11 SEC. 303. EARNINGS OF DISABILITY ANNUITANTS.

12 (a) IN GENERAL.—Section 2(e)(4) of the Railroad Re-
13 tirement Act of 1974 is amended—

14 (1) by striking out “\$200 in earnings” and insert-
15 ing in lieu thereof “\$400 in earnings (after deduction
16 of disability related work expenses)”;

17 (2) by striking out “\$2,400” each place it appears
18 and inserting in lieu thereof “\$4,800 (after deduction
19 of disability related work expenses)”;

20 (3) by striking out “\$200” each place it appears
21 and inserting in lieu thereof “\$400”; and

22 (4) by striking out “\$100” and inserting in lieu
23 thereof “\$200”.

1 (b) **EFFECTIVE DATE.**—The amendments made by this
2 section shall apply with respect to months in calendar years
3 beginning after December 31, 1986.

4 **SEC. 304. ALLOWANCE OF CREDIT FOR MILITARY SERVICE.**

5 (a) **IN GENERAL.**—Section 1(g)(2) of the Railroad Re-
6 tirement Act of 1974 is amended by adding at the end thereof
7 the following:
8 “For purposes of section 3(i)(2) of this Act, the period begin-
9 ning on June 15, 1948, and ending on December 15, 1950,
10 shall be deemed to be a war service period with respect to
11 any individual who without intervening employment not cov-
12 ered by this Act rendered service as an employee to an em-
13 ployer under this Act in the year such individual was re-
14 leased from active military service or in the year immediately
15 following such year.”.

16 (b) **EFFECTIVE DATE.**—The amendment made by this
17 section shall apply with respect to annuities accruing in
18 months after the date of enactment of this Act.

Mrs. KENNELLY. Today the Committee on Ways and Means is holding a hearing on H.R. 2167, the Railroad Unemployment Insurance and Retirement Improvement Act. This bill was referred jointly to the Committee on Energy and Commerce and the Committee on Ways and Means. The Committee on Energy and Commerce reported the bill favorably on May 21, 1987.

The Committee on Ways and Means has jurisdiction over the tax side of the Railroad Unemployment Insurance and Retirement programs. The Subcommittee on Public Assistance and Unemployment Compensation has jurisdiction over railroad unemployment taxes.

Consequently, the hearing will focus on the provisions in H.R. 2167 dealing with railroad unemployment taxes.

In addition, the subcommittee is concerned about the \$850 million debt owed by the unemployment program to the retirement program. We are particularly interested in ways this debt could be repaid by the year 2000, a goal previously discussed in the Ways and Means Committee report on the Railroad Retirement Solvency Act of 1983.

The bill makes several changes in railroad unemployment taxes and benefits. On the tax side, the \$600 per month taxable wage base would be indexed to two-thirds of the increase in the Social Security taxable wage base and an "experience rating" tax schedule for employers would be established. A surtax of 1.5, 2.5, or 3.5 percent would be created with the amount of surtax dependent on the balance in the fund.

The benefit changes include an increase in the maximum daily benefit from \$25 to \$30, and an increase in qualifying wages to five times the taxable wage base. This would increase the current \$1,500 requirement to \$3,000. The bill also limits benefits in the first 14-day benefit period to 5 days rather than the current 10 days.

Today we have three panels of witnesses.

The first panel represents the U.S. Railroad Retirement Board and includes Robert Gielow, Chairman, C.J. Chamberlain, labor member, and John D. Crawford, management member.

Would the witnesses come forward?

STATEMENT OF ROBERT A. GIELOW, CHAIRMAN, U.S. RAILROAD RETIREMENT BOARD

Mr. GIELOW. I am happy to be here with my colleagues. We have prepared formal statements which we would appreciate being accepted for the record.

Mrs. KENNELLY. They will be accepted.

Mr. GIELOW. I would like to make a brief summary of some of the points in the statements which I have submitted on behalf of the administration and I believe Mr. Chamberlain and Mr. Crawford would like to make similar summaries.

The administration feels the bill in its current form is lacking in two points. The first is that the provisions of the bill as presently constituted would create a shortfall of approximately \$78 million over the next 5 years, if you accept the changes in the various provisions that you cited, plus the offset of the taxation.

We feel this should be remedied.

The second one concerns the debt which you mentioned at \$850 million. The provisions for the repayment tax would not, by the year 2000, adequately eliminate this debt. The administration feels that these two items should be addressed in the bill that you are considering.

The administration, as you may recall, has always had a feeling that the Unemployment Insurance Program should be transferred to the individual States and this is still their position.

Additionally, it feels that the section 502 report should be amended to include a similar provision for the unemployment fund on an annual basis.

I think that summarizes the administration's position.

[The statement of Mr. Gielow follows:]

TESTIMONY OF ROBERT A. GIELON, CHAIRMAN
RAILROAD RETIREMENT BOARD
BEFORE THE SUBCOMMITTEE ON PUBLIC ASSISTANCE
UNEMPLOYMENT COMPENSATION OF THE COMMITTEE ON WAYS AND
MEANS ON H.R. 2167 WHICH WOULD AMEND THE
RAILROAD UNEMPLOYMENT INSURANCE ACT
JULY 14, 1987

Mr. Chairman and Committee Members, I am pleased to appear before this Subcommittee to present the views of the Administration on H.R. 2167 and the continuing debt owed by the unemployment account to the retirement account.

The Administration opposes H.R. 2167 in its current form because it does not adequately address repayment of the debt and it adds significantly to the Federal deficit compared to current law.

Since the early 1980's, the unemployment account has had to borrow about \$650 million from the retirement account in order to pay increased unemployment benefit payments resulting from layoffs in the rail industry. Interest on that debt accumulating at a rate of over \$80 million a year had increased the amount owed by September 1986 to \$866 million. Prior to July 1, 1986, there was no mechanism in place to repay the loans on a regular and recurring basis. The special repayment tax which went into effect on that date was only a partial solution.

Under current law, the debt owed by the unemployment account will still be about \$600 million when the special repayment tax expires in 1990. Interest will continue to accumulate, driving the balance owed to over one billion dollars by the year 2000. H.R. 2167, as it now stands, does not solve this debt problem.

In addition, benefit and other adjustments contained in H.R. 2167 increase outlays by \$105 million between fiscal years 1988 and 1992, while financing provisions increase revenues by only \$27 million over current law. The net effect of this legislation is to increase the Federal deficit over the next five years by some \$78 million.

The Administration thus cannot support H.R. 2167 without significant alterations. The Administration believes H.R. 2167 should include provisions to:

- increase rail UI contributions to both repay the pension fund at the constant 1988 rate until the debt is repaid, and fully finance UI benefit increases.
- further conform rail UI to Federal/State norms.
- move toward sound financing of UI fund by assuring minimum cash reserves which are several times greater than State norms.
- require incorporation of a report of financial status of the rail UI fund in annual Section 502 reports.

The Administration has already proposed a bill that would extend coverage under the Federal Unemployment Tax Act and State unemployment compensation laws to railroad employment, phasing out the special rail sector unemployment program. The Secretary of Labor, in transmitting this bill to the Congress on June 4, 1987, stated it would reduce the Federal deficit by \$612 million over the next five years. He further stated that besides providing higher State maximum weekly benefits to railroad workers, the Administration bill provides more stable and sound financing under the already established experience rated State systems. Finally, the Administration believes its bill will substantially improve the cash-flow condition of the railroad unemployment insurance program, enabling the full repayment of the debt to the rail pension fund.

Mrs. KENNELLY. Mr. Chamberlain.

**STATEMENT OF CHARLES J. CHAMBERLAIN, MEMBER (LABOR),
U.S. RAILROAD RETIREMENT BOARD**

Mr. CHAMBERLAIN. Thank you. I am C.J. Chamberlain. I appear before this committee in urging they give serious consideration to the adoption and enactment of H.R. 2167. It is certainly a most important piece of legislation both to the Retirement Board and to the railroad employees I have the honor to represent on the Board.

As you know, in 1983 Congress enacted legislation providing for the establishment of the Railroad Unemployment Compensation Committee. In July 1984, the Committee issued its report to Congress with various recommendations for amendments to the Railroad Unemployment Insurance Act to maintain the system as a separate and financially strong system of unemployment insurance for railroad employees.

Subsequent to issuance of the Committee's report, railroad labor and management reached agreement on proposed legislation to amend the Railroad Unemployment Insurance Act. The proposed legislation, H.R. 2167, embodied the recommendations of the Committee. More recently, railroad labor and management reached agreement on several modifications in the terms of the original agreement, including some minor amendments to the Railroad Retirement Act to correct certain inequities in that act. The terms of the agreement between railroad labor and management, most of which were based on the report of the Railroad Unemployment Compensation Committee, are embodied in H.R. 2167. As can be seen, the various amendments proposed in this bill have been the subject of lengthy consideration and negotiation. The bill is a very sound and reasonable piece of legislation which will improve the benefit levels payable to out-of-work railroad employees and provide for a financially sound unemployment and sickness insurance system for the railroad industry.

From the standpoint of the many currently unemployed railroad workers and those who will suffer the effects of unemployment in the future, the most important provisions of this bill are probably the amendments providing for increases in the daily benefit rate and for future indexing of that rate. The maximum daily benefit rate payable under the RUIA has been \$25 since July 1, 1976, despite dramatic increases in wages in the railroad industry and the periods of high inflation in the 11-year period since the last increase. While the bill would provide, initially, for an increase in this rate to \$30, it would, perhaps more importantly, index that rate on a yearly basis to increases in wages as reflected in the maximum compensation base provided for tier I taxes under the Railroad Retirement Tax Act.

Thus, the maximum daily benefit rate would increase as the basic cost of living increases. This will guarantee that unemployment protection afforded railroad employees would not again be eroded as happened subsequent to 1976. H.R. 2167 also provides for indexing of the compensation base on which contributions to finance the system are assessed so that income to the system will automatically increase with increases in the cost of living and the

daily benefit rate. This change will improve the ability of the system to adjust to increases in benefit costs and provide assurance that the financing problems faced by the system in the early 1980s will not again occur.

Enactment of H.R. 2167 would resolve the financial problems facing the Railroad Unemployment Insurance Program, provide higher benefits for unemployed workers, and provide some degree of security to workers in an industry that has, in recent years, been hit by high unemployment.

I would also like to address one other matter that, although not directly a part of the bill under consideration, should be of interest to the subcommittee. That matter, which was alluded to in our invitation to appear, is the repayment of the debt.

On June 16, 1987, the Board submitted its report to Congress as required by section 502 of the Railroad Retirement Solvency Act of 1983. That report, which contained the results of the latest actuarial study of the railroad retirement system, stated that under pessimistic employment projections, the system would encounter financial problems in 2001 and, even under optimistic projections, the system would encounter problems in 2007. With respect to that report, I recommended that the tier II tax rate on employers be increased to resolve the financial problems. However, there are two other proposals that, if enacted, would alleviate the problem somewhat, and I believe that the Congress should seriously consider these proposals and enact them into law.

The first proposal that I would like to address is an amendment to the railroad unemployment repayment tax provisions to provide for complete repayment of the debt owed by the unemployment system to the railroad retirement system by December 31, 2000. Board records show that as of April 30, 1987, the unemployment system owed the retirement system approximately \$850 million. That portion of the railroad unemployment tax which is intended to help repay the debt owed the railroad retirement system expires, under current law, on September 30, 1990. It is estimated that on September 30, 1990, there will remain an unpaid balance due the retirement system of approximately \$600 million.

Amending the repayment tax law so as to completely liquidate the debt by December 31, 2000, as I have suggested, would produce an estimated \$70 million in additional revenue for the Railroad Retirement Account, on the average, in each of the years 1990 through 2000. This additional revenue would reduce the actuarial deficiency of the system, as computed under intermediate employment assumptions, by approximately 0.4 percent of tier II taxable payroll.

The other proposal that I would like to recommend to the committee is to extend until December 31, 2000, the transfers to the Railroad Retirement Account of income tax receipts attributable to the non-Social Security equivalent portions of railroad retirement annuities.

In 1983, Congress enacted legislation subjecting Social Security and railroad retirement benefits to income taxes. The proceeds of the taxes attributable to Social Security benefits and the Social Security equivalent portion of railroad retirement annuities are to be

transferred to the Social Security trust funds and the Social Security Equivalent Benefit Account, respectively.

Proceeds of the tax on non-Social Security equivalent portions of the railroad retirement annuities are, under current law, transferred to the Railroad Retirement Account until either September 30, 1988, or until such transfers equal \$877 million, whichever first occurs.

Taxation of Social Security and railroad retirement benefits as seen from the perspective of the beneficiary is the equivalent of a benefit reduction. And, in the case of the Social Security trust funds and the Social Security Equivalent Benefit Account, the unlimited tax transfers produce the effect of a benefit reduction for the two accounts.

However, since the transfers to the Railroad Retirement Account are capped, the effect of taxation on the account balance is not the same as a benefit decrease. This difference in treatment under current law will result in losses to the railroad retirement system of approximately \$190 million a year between 1988 and 2000 under Department of Treasury projections.

If the provision of law authorizing the transfer of revenues to the Railroad Retirement Account were extended to December 31, 2000, as I am recommending, the approximately \$190 million in additional revenues each year through 2000 would reduce the actuarial deficiency of the system, as computed under the intermediate employment assumption, by approximately 1.3 percent of tier II taxable payroll, assuming, of course, that projections by the Department of Treasury are accurate.

Enactment of the two proposals that I am recommending would not completely resolve the financial problems facing the railroad retirement system, but it would reduce the projected deficiency of 4.75 percent by 1.7 percent. I believe that enactment of these proposals would be both prudent and equitable and I strongly recommend that this subcommittee and the Congress consider the proposals and enact them into law.

[The prepared statement follows:]

TESTIMONY OF C. J. CHAMBERLAIN, LABOR MEMBER
RAILROAD RETIREMENT BOARD,
BEFORE THE SUBCOMMITTEE ON PUBLIC ASSISTANCE AND
UNEMPLOYMENT COMPENSATION OF THE COMMITTEE ON WAYS AND
MEANS ON H.R. 2167 WHICH WOULD AMEND THE
RAILROAD UNEMPLOYMENT INSURANCE ACT
JULY 14, 1987

Mr. Chairman and Members of the Subcommittee, I wish to thank you for the opportunity to testify on H. R. 2167, a bill which would amend the Railroad Unemployment Insurance Act. By way of introduction, I am Charles J. Chamberlain and I am the Labor Member of the Railroad Retirement Board.

H. R. 2167 is a very important piece of legislation both to the Railroad Retirement Board and to the railroad employees whom I have the honor to represent on the Board. I urge you to act quickly and favorably on H.R. 2167.

As you know, in 1983 Congress enacted legislation providing for the establishment of the Railroad Unemployment Compensation Committee. Section 504 of the Railroad Retirement Solvency Act of 1983 directed that the Committee, to be composed of representatives of railroad labor, railroad management, and a public member, report to the Congress its recommendations concerning financing and benefit adjustments that might be made in the Railroad Unemployment Insurance Act to improve the financial condition of the railroad unemployment insurance system. In July 1984 the Committee issued its report to Congress with various recommendations for amendments to the Railroad Unemployment Insurance Act to maintain the system as a separate and financially strong system of unemployment insurance for railroad employees.

Subsequent to issuance of the Committee's report, railroad labor and management reached agreement on proposed legislation to amend the Railroad Unemployment Insurance Act. The proposed legislation embodied the recommendations of the Committee. More recently, railroad labor and management reached agreement on several modifications in the terms of the original agreement, including some minor amendments to the Railroad Retirement Act to correct certain inequities in that Act. The terms of the agreement between railroad labor and management, most of which were based on the Report of the Railroad Unemployment Insurance Committee, are embodied in H.R. 2167. As can be seen the various amendments proposed in this bill have been the subject of lengthy consideration and negotiation. The bill is a very sound and reasonable piece of legislation which will improve the benefit levels payable to out-of-work railroad employees and provide for a financially sound unemployment and sickness insurance system for the railroad industry.

From the standpoint of the many currently unemployed railroad workers and those who will suffer the effects of unemployment in the future, the most important provisions of this bill are probably the amendments providing for increases in the daily benefit rate and for future indexing of that rate. The maximum daily benefit rate payable under the RUIA has been \$25.00 since July 1, 1976, despite dramatic increases in wages in the railroad industry and the periods of high inflation in the eleven-year period since that last increase. While the bill would provide, initially, for an increase in this rate to \$30.00, it would, perhaps more importantly, index that rate on a yearly basis, to increases in wages as reflected in the maximum compensation base provided for tier I taxes under the Railroad Retirement Tax Act.

Thus, the maximum daily benefit rate would increase as the basic cost of living increases. This will guarantee that unemployment protection afforded railroad employees would not again be eroded as happened subsequent to 1976. H.R. 2167 also provides for indexing of the compensation base on which contributions to finance the system are assessed so that income to the system will automatically increase with increases in the cost of living and the daily benefit rate. This change will improve the ability of the system to adjust to increases in benefit costs and provide assurance that the financing problems faced by the system in the early 1980's will not again occur.

In recent years railroad employees have faced fairly high levels of unemployment and have suffered under a maximum daily benefit rate of \$25.00, a rate that might have been appropriate for 1976, but clearly is inadequate in today's economy. In addition, railroad employees have, quite understandably, become concerned about the future of the railroad unemployment insurance system. Enactment of H.R. 2167 would resolve the financial problems facing the railroad unemployment insurance program, provide higher benefits for unemployed workers, and provide some degree of security to workers in an industry that has, in recent years, been hit by high unemployment. Again, I urge you to act favorably in your consideration of H.R. 2167.

I would also like to address one other matter that, although not directly a part of the bill under consideration, should be of interest to the subcommittee. That matter is the financial problems facing the railroad retirement system in the early 2000's as projected by the Board's recent report under section 502 of the Railroad Retirement Solvency Act of 1983.

On June 16, 1987, the Board submitted its report to Congress as required by section 502 of the Railroad Retirement Solvency Act of 1983. That report, which contained the results of the latest actuarial study of the railroad retirement system, stated that under pessimistic employment projections the system would encounter financial problems in 2001 and, even under optimistic projections, the system would encounter problems in 2007. With respect to that report I recommended that the tier II tax rate on employers be increased to resolve the financial problems. However, there are two other proposals that, if enacted, would alleviate the problem somewhat, and I believe that the Congress should seriously consider these proposals and enact them into law.

The first proposal that I would like to address is an amendment to the railroad unemployment repayment tax provisions to provide for complete repayment of the debt owed by the unemployment system to the railroad retirement system by December 31, 2000. Board records show that as of April 30, 1987, the unemployment system owed the retirement system approximately \$850 million. That portion of the railroad unemployment tax which is intended to help repay the debt owed the railroad retirement system expires, under current law, on September 30, 1990. It is estimated that on September 30, 1990, there will remain an unpaid balance due the retirement system of approximately \$600 million. Amending the repayment tax law so as to completely liquidate the debt by December 31, 2000, as I have suggested, would produce an estimated \$70 million dollars in additional revenue for the Railroad Retirement Account on average in each of the years 1990 through 2000. This additional revenue would reduce the actuarial deficiency of the system, as computed under intermediate employment assumptions, by approximately 0.4 percent of tier II taxable payroll.

The other proposal that I would like to recommend to the committee is to extend until December 31, 2000, the transfers to the Railroad Retirement Account of income tax receipts attributable to the non-social security equivalent portions of railroad retirement annuities. In 1983, Congress enacted legislation subjecting social security and railroad retirement benefits to income taxes. The proceeds of the taxes attributable to social security benefits and the social security equivalent portion of railroad retirement annuities are to be transferred to the social security trust funds and the Social Security Equivalent Benefit Account respectively. Proceeds of the tax on non-social security equivalent portions of the railroad retirement annuities are, under current law, transferred to the Railroad Retirement Account until either September 30, 1988, or until such transfers equal \$877 million, whichever first occurs.

Taxation of social security and railroad retirement benefits as seen from the perspective of the beneficiary is the equivalent of a benefit reduction. And, in the case of the social security trust funds and the Social Security Equivalent Benefit Account, the unlimited tax transfers produce the effect of a benefit reduction for the two accounts. However, since the transfers to the Railroad Retirement Account are capped, the effect of taxation on the Account balance is not the same as a benefit decrease. This difference in treatment under current law will result in losses to the railroad retirement system of approximately \$190 million a year between 1988 and 2000 under Department of Treasury projections.

If the provision of law authorizing the transfer of revenues to the Railroad Retirement Account were extended to December 31, 2000, as I am recommending, the approximately \$190 million in additional revenues each year through 2000 would reduce the actuarial deficiency of the system, as computed under the intermediate employment assumption, by approximately 1.3 percent of tier II taxable payroll, assuming, of course, that projections by the Department of Treasury are accurate.

Enactment of the two proposals that I am recommending would not completely resolve the financial problems facing the railroad retirement system, but it would reduce the projected deficiency of 4.75 percent by 1.7 percent. I believe that enactment of these proposals would be both prudent and equitable and I strongly recommend that this subcommittee and the Congress consider the proposals and enact them into law.

I again would like to express my gratitude to the committee for allowing me to testify in support of H.R. 2167.

Mrs. KENNELLY. Mr. Crawford.

**STATEMENT OF JOHN D. CRAWFORD, MEMBER (MANAGEMENT),
U.S. RAILROAD RETIREMENT BOARD**

Mr. CRAWFORD. As management member of the Board, I would recommend that H.R. 2167 be enacted without change. It is a good bill. It will help the Board, which will help the employees. It will help the management of the industry.

With regard to the repayment tax, this is a new proposal that has come up in the last few months, and on July 1, 1987, the Subcommittee on Social Security of the House Ways and Means Committee marked up reconciliation legislation which would provide for a Commission on Railroad Retirement Reform to study alternative methods of securing the long-term viability of railroad retirement.

It seems to me the question of the repayment of the debt from the Railroad Unemployment Insurance Account to the Railroad Retirement Account is within the ambit of that Commission's concerns, and that this subcommittee should await the report of the Railroad Retirement Reform Commission under the reconciliation legislation marked up July 1.

I appreciate the opportunity to address the subcommittee, and would be happy to answer any questions.

[The statement of Mr. Crawford follows:]

STATEMENT OF
 JOHN D. CRAWFORD, MANAGEMENT MEMBER
 U.S. RAILROAD RETIREMENT BOARD
 BEFORE THE
 SUBCOMMITTEE ON PUBLIC ASSISTANCE AND UNEMPLOYMENT COMPENSATION
 OF THE
 COMMITTEE ON WAYS AND MEANS
 U.S. HOUSE OF REPRESENTATIVES
 JULY 14, 1987

Mr. Chairman and Members of the Subcommittee:

The amendments to the Railroad Unemployment Insurance Act in H.R. 2167 increase the daily benefit rate from \$25 to \$30, and provide adequate funding, through an experience-rated contribution system, to fund such increases. The indexing of benefits and of the contribution base in Section 101 will make it unnecessary for Congress to consider adjustments in such rates because of changing economic conditions. In addition, the increase in administrative expenses for the Board's unemployment insurance program in Section 103 is needed.

Since the effective date of the higher daily benefit rate will be retroactive to July 1, 1987, the Board will have to go back and issue checks to unemployment and sickness insurance claimants for the differential, but there is no problem in handling this matter.

The effective dates of the change to experience rating in Section 102 give the Board staff sufficient lead time for automation and programming to compile and maintain data and compute experience-rated contributions. The implementation of the experience-rating provisions will require a major effort by Board staff, but the Board will have no serious problem in implementing such provisions unless there is a long delay in passage of the bill which would shorten the time available to complete such programs after passage of the bill.

The introduction of experience rating for employers will be a stabilizing influence on employment, giving the employer more incentive to smooth out the ripples in the size of its work force.

Furthermore, the provisions in Section 104 of H.R. 2167 for employer input in the adjudication process will be additional insurance of program integrity.

While every provision of this bill is worthy of comment, there seems to be general agreement on the merits of the bill, as the result of its substance being the subject of the Report of the Unemployment Compensation Committee in 1984, and many of its provisions having been considered in House Report No. 99-931 on H.R. 5501 in the 99th Congress, and Senate Report No. 99-281 on S. 1968, a companion bill, as well as in House Report No. 100-102 (Pt. 1, May 21, 1987), submitted by the Committee on Energy and Commerce on the present bill.

H.R. 2167 consists, for the most part, of an implementation of recommendations made in the Report of the Railroad Unemployment Compensation Committee, established by Section 504 of the Railroad Retirement Solvency Act of 1983 (Public Law 98-76).

Some of the recommendations of RUCC have not been included in the proposed legislation, and in August 1986, representatives of railroad management and railroad labor agreed to add certain provisions to the RUCC recommendations, which are now included in H.R. 2167.

In August 1986 the only provision to which railroad management took exception was a provision which would have increased the retirement benefits of employees who received severance allowances in a year in which they had performed no creditable service under the Railroad Retirement Act. That provision was dropped from the proposed legislation in H.R. 2167, and the provision in Section 301 of the bill, which provides for a lump-sum payment equal to the employee's contribution to the retirement fund from compensation for which the employee did not receive service credit, is acceptable to railroad management.

With regard to the repayment tax, the Subcommittee has requested the views of witnesses on the continuing debt of about \$850 million owed to the Railroad Retirement Account by the Railroad Unemployment Insurance Account. The present tax, which expires in 1990, will leave almost \$600 million still owed by the Railroad Unemployment Insurance Account to the Railroad Retirement Account in 1990. The Railroad Retirement Board has taken action twice during Fiscal Year 1987 to reduce this debt, by transferring surplus funds from the Railroad Unemployment Insurance Account to the Railroad Retirement Account. Shortly after the close of FY 86, the Board took action to transfer \$13 million of the surplus, and at the end of the first quarter of FY 87, an additional \$6.5 million of the surplus in the Railroad Unemployment Insurance Account was transferred to the Railroad Retirement Account.

With regard to the goal of repayment by the year 2000, this recommendation of the RUC Committee was coupled with a recommendation that the interest on loans from the Railroad Retirement Account after September 1980 should be forgiven, since this in effect is money the railroad industry owes to itself. If only the principal of the loans from the railroad retirement account was being repaid, the balance due after 1990 would be negligible.

The Social Security Subcommittee of the House Ways and Means Committee marked up reconciliation legislation on July 1, 1987 which provided for a Commission on Railroad Retirement Reform, to study alternative methods of securing the long-term viability of railroad retirement. It seems to me that the question of the repayment of the debt from the Railroad Unemployment Insurance Account to the Railroad Retirement Account is within the ambit of that Commission's concerns, and that this Subcommittee should await the report of the Railroad Retirement Reform Commission, under the reconciliation legislation marked up by the Social Security Subcommittee on July 1.

I appreciate the opportunity to address this Subcommittee on a matter of such vital importance to the employees of the railroad industry and to railroad management. I will be happy to answer any questions you may have on these matters.

Mrs. KENNELLY. Thank you.

At this time I would like to call on our acting chairman, Congressman Downey.

Mr. DOWNEY. Thank you, Mrs. Kennelly. Thank you for chairing the hearing.

I would like to apologize in advance to the witnesses for my delinquent and probably erratic behavior. The Committee on Education and Labor is marking up the welfare reform bill on which this subcommittee has spent an enormous amount of time. We have concurrent jurisdiction over one of the most important titles, so I will be in and out of this room.

I will certainly try to make it back to hear the Long Island Rail Road testimony, but I am not sure that will be possible either.

Thank you, Madam Chair, temporary acting person, for taking over for me in this capacity. I have an opening statement which I will include as part of the general record. We intend to deal with this issue this year, perhaps in time for reconciliation, so we are anxious to hear what you have to say.

We have some serious concerns about the size of the debt and share, amazingly enough, some of the administration's concern about that. I think I speak for the rest of the subcommittee when I say that while we like a lot of what is in the Commerce legislation, we have other concerns that we will address during these deliberations. I have no other comments and no questions, Madam Chairperson.

[The opening statement of Mr. Downey follows:]

July 14, 1987

Opening Statement of
The Honorable Thomas J. Downey (D., N.Y.), Acting Chairman
Subcommittee on Public Assistance and Unemployment Compensation
Committee on Ways and Means
at a hearing on
H.R. 2167
Railroad Unemployment Insurance and
Retirement Improvement Act of 1987

The Subcommittee on Public Assistance and Unemployment Compensation will come to order.

The subject of today's hearing is H.R. 2167, the Railroad Unemployment Insurance and Retirement Improvement Act of 1987. This bill was referred jointly to the Committee on Energy and Commerce and the Committee on Ways and Means. The Committee on Energy and Commerce reported the bill favorably on May 21, 1987.

The Committee on Ways and Means has jurisdiction over the tax side of the Railroad Unemployment Insurance and Retirement programs. The Subcommittee on Public Assistance and Unemployment Compensation has jurisdiction over railroad unemployment taxes. Consequently, the hearing will focus on the provisions in H.R. 2167 dealing with railroad unemployment taxes. In addition, the Subcommittee is concerned about the \$850 million debt owed by the unemployment program to the retirement program. We are particularly interested in ways this debt could be repaid by the year 2000, a goal previously discussed in the Ways and Means Committee report on the Railroad Retirement Solvency Act of 1983.

The bill makes several changes in Railroad Unemployment taxes and benefits. On the tax side, the \$600 per month taxable wage base would be indexed to two-thirds of the increase in the social security taxable wage base and an "experience rating" tax schedule for employers would be established. A surtax of 1.5, 2.5, or 3.5 percent would be created with the amount of the surtax dependent on the balance in the fund.

The benefit changes include an increase in the maximum daily benefit from \$25 to \$30, and an increase in qualifying wages to 5 times the taxable wage base. This would increase the current \$1,500 requirement to \$3,000. The bill also limits benefits in the first 14 day benefit period to 5 days rather than the current 10 days.

Today we have three panels of witnesses.

The first panel represents the Railroad Retirement Board and includes Robert Gielow, Chairman, C.J. Chamberlain, labor member, and John D. Crawford, management member.

The second panel includes four individuals who were members of the Railroad Unemployment Compensation Committee, which submitted its final report on June 29, 1984. They are Robert J. Myers, former Chief Actuary of the Social Security Administration, William H. Dempsey, President and Chief Executive Officer, Association of American Railroads, Charles I. Hopkins, Jr., Chairman, National Railway Labor Conference, and Richard I. Kilroy, Chairman, Railway Labor Executives' Association and President, Brotherhood of Railway and Airline Clerks.

The third panel consists of several representatives of the commuter railroads, including Bruce McIver, Metropolitan Transportation Authority of New York and President, Long Island Rail Road, Alan Dustin, General Manager, New Jersey Transit Rail Operations, and Denise H. Early, Government Information Coordinator, Southeastern Pennsylvania Transportation Authority.

I look forward to your testimony on this important issue.

Mrs. KENNELLY. Thank you.

Mr. Gielow, thank you for your testimony.

Gentlemen, all of your testimony will be put in the record.

The nice thing about these kinds of hearings when we have men like you who are totally knowledgeable of the whole situation is that we are here to get everything on the record, and that is what we will proceed to do.

Mr. Gielow, according to the CBO cost estimates on H.R. 2167, the bill would increase the Federal budget deficit by only \$3 million over the next 3 years. In the next 2 years, however, CBO estimated that the bill would increase the Federal budget deficit by \$33 million and \$42 million, respectively.

Now, I wonder if you would help us with this kind of projection? Are the rising costs in the last 2 years of the projection period the beginning of a trend?

Mr. GIELOW. I think the Budget Office estimates reflect the institution of the amendments, the eligibility, the experience rating, the various effects which will cut in as the years go by.

In other words, it will take some time for experience rating to take place. I think also there is a question of what is the actual rate of decline going to be.

The CBO estimate is divided partially with unemployment compensation and partially with changes in the retirement program.

Mrs. KENNELLY. But you are not arguing with the CBO figures?

Mr. GIELOW. No.

Mrs. KENNELLY. Mr. Downey would like to ask a question.

Mr. DOWNEY. I have been queried by my own rail commuter line on Long Island where we have some 6,000 constituents that ride it regularly.

There is a subsidy that the rail commuter lines pay, they claim, of some \$13.5 million to the RUIA. The commuter railroads claim that they are unfairly grouped with private freight trains, and their contribution acts as a public subsidy. They have suggested that the commuter lines should be granted an exemption from RUI and allowed to join the unemployment plans of their own States.

I would like you to comment on that point. I would also like you to comment on another recommendation that the commuter railroads should be treated as a separate class under RUI and pay unemployment taxes, including repayment taxes, starting immediately based on their employment experience.

Mr. GIELOW. I think the item of experience rating is meant to correct that situation in that, up until now, there has been one rate, as you know, for unemployment compensation. The institution of the experience rating is an attempt to have reflected a good employment experience.

Unquestionably, the commuter railroads have much less unemployment claims than any of the other railroads. Whether the present experience rating plan that is submitted completely reflects that or not, I think is a matter that may be subject of debate.

Mr. DOWNEY. I assume you are not in favor of permitting rail commuter lines to be part of the State unemployment compensation pool.

Mr. GIELOW. Well, perhaps I would rather let one of my colleagues answer that question.

Mr. CHAMBERLAIN. Mr. Downey, I have no problem with that one. I am unalterably opposed to the commuter lines being given separate treatment. They are part of the railroad industry, whether they recognize that or not.

If you go back and check the history of why we were set up in the way we were set up, that is just a first step. We hear other rumors, that they want out from coverage under the Retirement Act, too.

Any removal of any segment, be it the commuter lines or Amtrak, would be disastrous for the entire system. So I am very much opposed and I speak with authority, without fear of contradiction from my labor colleagues.

Mr. DOWNEY. Can I ask you one other question?

Isn't it true that the rail commuter industry is very different from the freight industry? It is a growing industry and the freight industry is a declining industry.

Is there any credence to that?

Mr. CHAMBERLAIN. Well, they may be a growing industry. They are part of the industry. I have a difficult time separating the two. They are still running trains. As far as I am concerned, it is the operation of trains that is the key to the whole thing whether it be commuter lines or freight lines. It is just hard to make any differentiation there.

Mr. DOWNEY. Thank you.

Mr. CRAWFORD. I recognize my position this morning is at variance with the position of the New Jersey Transit and other commuter lines here. However, I attempt to represent the consensus of management, and I believe that the consensus is that the bill should be enacted without a change.

However, I do recognize that there is an inequity with regard to the taxation of the commuter railroads for unemployment and sickness benefits because their work force is much more stable than those of the freight lines.

I can understand their request that the experience rating provisions be expedited, and I recognize that the inequity might be remedied by the proposal that they be exempted from unemployment repayment tax.

However, I think the proposal that they be given the option of participation in the State unemployment systems or that they be transferred to the State unemployment systems without option would create too many administrative problems.

I think that that decision should be made with regard to the railroad industry as a whole—that is, whether or not we should continue to have a federalized system or transfer to the States. And with regard to the inequity and the financing of unemployment benefits, I believe that most of that inequity will be remedied by the provisions on experience rating in the bill before us.

To the extent they would like to have this expedited—here, again, our staff is going to have quite a problem finishing up the programming and other work necessary to introduce experienced rating into our system of collecting contributions, and I would be reluctant to make it any more complicated than it is.

Thank you.

Mr. DOWNEY. Let me express my prejudice.

I am only the acting chairman of this subcommittee. I am not its permanent chairman. I have a very open mind to suggestions about what needs to be done and I want the members of the Board to know that and the other witnesses to know that as well.

I don't bring any hard and fast attitudes one way or the other with respect to the approaches here except that I want to help you solve the problem. I do not want to see people who have been promised benefits denied them.

That is something I feel very strongly about. I have a steadfast and ironclad commitment to the retirees and I think that is true here. I imagine I speak for the other members of the subcommittee on that point.

As far as dealing with this possibly innovative way, I am also open to suggestions.

Thank you, Barbara.

Mrs. KENNELLY. Mr. Chamberlain, in your testimony you recommend amending the repayment tax so that current debt plus interest would be repaid by the end of the year 2000. You note that this would reduce the estimated actuarial deficit in the railroad retirement program of 4.75 percent of tier II taxable payroll by 0.4 percentage point. This would help to achieve two goals: repayment of the debt and reducing the actuarial imbalance in the retirement program.

What we would like to ask you is, what are the advantages of this approach compared to, say, a temporary diversion of additional railroad retirement revenue to the Railroad Unemployment Insurance Account for the purpose of repaying the debt?

That is a technical question. I said we are going to get everything on the record. If you want me to ask it again, I will.

Mr. CHAMBERLAIN. No, I think I can address it in my own way.

In the 502 report that was just issued by the Board, our actuaries said there was an actuarial deficiency of 4.75 percent. Of course, I am biased and prejudiced in that regard because I am privy every day to the buyouts, the selloffs of the railroad industry, and estimates of the people affected by them. My labor colleagues and I have said that the actuarial deficiency should be paid by the railroad industry.

We recognize the railroad industry as a whole—and are certainly supportive of the railroad industry. However, as an administrator of the railroad retirement system, I think we should do everything we can to obtain all the revenues that are due us. If you will recall, back after the Solvency Act legislation was enacted, we came up with a proposal that said at that time we had sufficient funds and could consider diverting some of the present tier II taxes to help pay the debt.

We even agreed at that time that it should be interest-free. In other words, pay the debt, just principal, and waive the interest to help the industry. But the circumstances and the events of the past 3 years have precluded us from taking such action. This is a package we have been trying to get enacted by Congress and it kind of blows my mind when I think it takes over 3 years to get an important unemployment bill enacted.

During that 3-year period a lot of things have happened, and there has been a big decline in railroad employment. And that is the factor on which our trust fund functions.

Just recently this committee, or the Ways and Means Committee, came up with a recommendation, I think, of 2 percent in the tier II tax, 1 to be paid in 1988, and 1 in 1989.

Is that correct?

Mr. GIELOW. Two percent in 1988.

Mr. CHAMBERLAIN. Two percent in 1988. OK.

If that were followed through, and certainly there must be some sentiment for it or they wouldn't have marked it up, that 2 percent plus what I am recommending here, repayment tax of 1.3 and then the continued diversion of the income taxes to our railroad retirement trust fund comes up to, I think, close to 3.7 percent.

That is a long way towards the 4.75 percent deficiency. That is going to put us down the road quite a ways before we are going to have a real financial problem. If in fact the Commission that has been recommended is set up, certainly it will give that Commission time to solve or certainly review all the railroad retirement trust funds.

You can't separate unemployment from the retirement trust fund.

Mrs. KENNELLY. You can't, sir, but we agreed, I guess, on those CBO figures and I wonder, how do you look at the bill right now as to how it affects net reserves of the act, say, in the year 2000?

Mr. CHAMBERLAIN. I am a little bit leery about anyone's figures that go beyond 1 year.

Mrs. KENNELLY. We have the same problem, also.

Mr. CHAMBERLAIN. I understand that. And I think that is why the Solvency Act was a unique piece of legislation where we, as a Board, come up with our 502 report.

We do it on an annual basis and give a report to the Congress on the status of our trust funds. Maybe the recommendation—there are very few things I agree with the administration, but I think I heard somebody say here this morning, maybe RUIA should be put over in 502.

And the same provisions apply there. Maybe that would be a good move. We could review this on a yearly basis. Because I wouldn't want to predict anything except I am sure that eventually there has got to be a bottom in employment decline.

I don't think we are going to see the railroad industry disappear in total and our employment levels are getting pretty low now. There has to be a bottom. We have said that for the last 5 years, but somewhere along the line there has got to be a bottom.

Mrs. KENNELLY. Thank you, sir.

I have one last question for Mr. Crawford.

You note that the recommendation of the RUC committee to repay the debt by the year 2000 was coupled with a recommendation that the interest on the loans be forgiven, since this, in effect, is money the railroad industry owes itself.

If the interest is not paid by the railroad unemployment insurance account, from where will an equal amount of additional revenue come to pay for future retirement benefits?

Mr. CRAWFORD. The railroad industry, including the share paid by the employees, is bound to make the payments required to take care of benefits, and the amount of money owed by the Unemployment Insurance Account to the Railroad Retirement Account at the end of the present law will really be inconsequential with respect to the viability of the Railroad Retirement Account.

And I think that even if there is a balance owed at the end of 1990, that we will have to depend upon the tier II tax rate to take care of future benefits.

Mrs. KENNELLY. Thank you, sir.

Mr. Chandler.

Mr. CHANDLER. No questions.

Mrs. KENNELLY. Mr. Pease.

Mr. PEASE. No questions.

Mrs. KENNELLY. Thank you, sir.

I know 3 years is a long time. We are trying. I appreciate very much your time and your professional testimony. And I know the staff will be back to you.

Thank you very much.

The next panel: Robert Myers, William Dempsey, Charles Hopkins and Richard Kilroy.

Mr. Myers, would you like to start us off?

STATEMENT OF ROBERT J. MYERS, FORMER CHIEF ACTUARY, SOCIAL SECURITY ADMINISTRATION, AND CHAIRMAN, RAILROAD UNEMPLOYMENT COMPENSATION COMMITTEE

Mr. MYERS. It is always a pleasure to testify before the Committee on Ways and Means. As the Chairman of the Railroad Unemployment Compensation Committee, I am very pleased to see that the Congress is now completing action on our recommendations.

As you know, partial work on these recommendations was done in COBRA in 1986. I am very pleased to see so many of our recommendations have been considered favorably by the Congress.

As to the benefit changes which would be made in H.R. 2167, I think that it is fair to say that they more or less parallel what we recommended, plus certain updating to recognize that time has gone by since our recommendations were made.

I think that it is worthy of note that the benefit structure of RUI is such that it is not particularly an overly liberal system. It probably is at about the same level as a typical State UI system.

So it cannot be said the benefits are, by any means, extravagant. In COBRA, the Congress enacted a special surcharge tax for the system for the future, if the RUI system went into a deficit for its future operations and had to borrow from the Railroad Retirement Account.

This tax is at the rate of 3.5 percent on an annual payroll maximum of \$7,000. The pending bill, as to financing, would establish an experience rating system—as I believe is highly desirable—and it also contains a provision for a surcharge tax rate if the fund balance becomes relatively small.

This procedure would be done in order to prevent the fund from going bankrupt. In my opinion, there should be some further strengthening of these fail-safe or stabilizing devices. In my testi-

mony, which I hope will be made part of the record, I suggest a surcharge tax rate schedule that starts a somewhat higher level of fund balance and moves in gradual steps for lower fund balances, including when the fund is in negative position.

Under my proposal, when the fund balance reaches a certain point—higher than the trigger point in the bill—the surcharge tax rate would gradually go into effect.

I also suggest merging the surcharge tax rate when the fund is small with the one when the fund goes negative and has to borrow from the Railroad Retirement Account.

I further suggest a little more uniformity by not having so many different earning bases. As you know, there is a Social Security earnings base, a tier II base, a \$7,000 annual base for the surcharge tax that was enacted by COBRA, and a new RUI base, which starts out at \$600 per month and later is indexed.

I suggest the surcharge tax rates for when the fund becomes too small or goes negative should be on the same base and in the same schedule.

The major recommendation which the Committee made that was not accepted by the Congress was with regard to the repayment of the debt to the Railroad Retirement Account, which is now around \$850 million. This might be said to be for past deficits.

The Committee recommended that this be met in several ways. One way was to obtain a payment from the General Treasury, so as to reflect the fact that the State UI systems had received subsidies and the railroad UI system had not received a similar subsidy.

I am opposed, in general, to general-revenues subsidies to social insurance systems, but in this case I was in favor of it, so as to make for consistent treatment between the State UI systems and RUI.

We also suggested that interest should be forgiven on the loans, so that RUI would not pay the interest to Railroad Retirement, and Railroad Retirement would not get that interest. I think that these are still good and proper ideas, but the Congress has said "no", so I proceed on from there with the major question of how is this \$850 million to be financed? The bill does not consider this matter, but I know that the subcommittee is most interested in it.

I think that the way to handle this problem is through what the Committee had recommended as the final closing element. We had recommended that certain parts of the debt either be forgiven or be met by money coming in from the General Treasury. Then, we said any balance should be met by a level repayment tax from now through the year 2000, with the rate being adjusted every 3 years or so, in order to be certain that by the end of 2000, the debt would be paid off.

I think that is still a good suggestion. In my testimony I propose eliminating the presently scheduled repayment tax after the end of this year, and putting in a new level repayment tax from 1988 on through 2000.

This tax should be on the basis of the RUI taxable payroll—that is taking into account the indexed, increased earnings bases.

I do not have the facilities to make the necessary estimates of the rate initially needed in the way the Railroad Retirement Board

actuaries do, but I would guess that it would be in the neighborhood of a level 4 percent tax rate.

I also suggest that one of the financing provisions that the Committee recommended be reconsidered by your subcommittee. This is a provision that would not have any cost effect on anybody, the General Treasury or the Railroad Retirement Account. It would parallel what, as you know, is already done in Social Security, namely, so-called advance tax transfers. These would make the money available from the taxes during the quarter at the beginning of the quarter with repayment to the General Treasury as the taxes are received and with appropriate interest adjustments.

This would act as a fail-safe device in addition to the higher surtaxes if the fund ever became low. These loans would—just as for Social Security—be repayable with interest at the end of the quarter.

The whole purpose of this procedure is to have the income—instead of coming in irregularly during the quarter, with peaking—be available immediately, so as to meet the benefit payments which flow uniformly throughout the quarter.

Again, I emphasize that this would not cost the General Treasury anything. It is done under the Social Security system, and I think that everybody is agreed that it is an equitable and desirable procedure.

Finally, I suggest the possibility of changing the wage base on which RUI taxes are levied. As you know, at present they are levied on \$600 a month in one respect and \$7,000 a year in another respect.

With wages being what they are for steady workers, this amounts to a flat dollar tax for everybody and produces tax rates that, when you first look at them, are unconscionably high, such as an 8 percent tax rate for unemployment insurance. This sounds very high until you realize that it is on a base that represents somewhat less than 25 percent of total payroll.

So, there would be the possibility of getting greater uniformity and simplicity by having a higher taxable base for RUI and, at the same time, proportionately lowering the tax rates to approximately a quarter of what they are now. This would not be done to solve any of the financing problems, but rather for greater simplicity and uniformity.

Finally, Madam Chair, the bill, which I support along with the foregoing suggestions, does contain some proposed minor changes in the railroad retirement program. These changes seem desirable in my opinion.

Thank you.

Mrs. KENNELLY. Thank you, sir.

[The statement of Mr. Myers follows:]

STATEMENT BY ROBERT J. MYERS PRESENTED TO THE SUBCOMMITTEE ON PUBLIC ASSISTANCE AND UNEMPLOYMENT COMPENSATION OF THE COMMITTEE ON WAYS AND MEANS, HOUSE OF REPRESENTATIVES, JULY 14, 1987, WITH REGARD TO H.R. 2167, THE RAILROAD UNEMPLOYMENT INSURANCE AND RETIREMENT IMPROVEMENT ACT OF 1987.

Mr. Chairman and Members of the Subcommittee: My name is Robert J. Myers. I served in various actuarial capacities with the Social Security Administration and its predecessor agencies during 1934-70, being Chief Actuary for the last 23 of those years. In 1942-43, I conducted the Second Actuarial Valuation of the Railroad Retirement System, while on loan from the Social Security Administration. In 1981-82, I was Deputy Commissioner of Social Security, and in 1982-83, I was Executive Director of the National Commission on Social Security Reform.

Section 504 of the Railroad Retirement Solvency Act of 1983 established the Railroad Unemployment Compensation Committee, which was assigned the responsibility of reviewing all aspects of the unemployment and sickness benefit system provided for by the Railroad Unemployment Insurance Act, in the light of its financing problems. In December 1983, the two representatives of railroad labor and the two representatives of railroad management on the Railroad Unemployment Compensation Committee requested me to be the public member.

The Report of the Committee was submitted on June 29, 1984. As with any consensus agreement, none of the members of our Committee were enthusiastic about all of the recommendations made. However, we agreed that, under the circumstances, the consensus agreement is the best method to achieve long-range financial solvency for the program if it is to remain an independent one. As you will recall, your Subcommittee held hearings on this report on September 18, 1984, and again on July 15, 1985.

The Congress has already acted in part on the recommendations made by the Committee -- namely, in the Consolidated Omnibus Budget Reconciliation Act of 1985. The pending bill, H.R. 2167, would complete such action. I am pleased that, on the whole, favorable consideration has been given to these recommendations.

COBRA essentially made permanent the authority of the RUI program to borrow from the Railroad Retirement program. It also added an automatic surcharge tax rate of 3.5% on an annual earnings base of \$7,000 when loans made after September 1985 are not repaid promptly. In addition, COBRA significantly increased the repayment-tax rates for 1986-88 that had previously been instituted for the sole purpose of repaying the past loans from the RR Account to RUI -- and left unchanged such rates for 1989-90 (no such tax being applicable after 1990).

H.R. 2167 contains -- necessarily in updated form -- the various recommendations as to benefits made by the Committee, although with certain minor revisions, with which I concur. The pending bill also follows the recommendation that the general contribution rates for RUI should be experience-rated for each employer, with a surcharge rate when the fund balance is low. The pending bill, however, does not adopt some of the other financing recommendations -- namely;

- (1) A grant of \$135 million from the General Fund (to equalize for past preferential treatment given to the state UI systems, primarily through interest-free loans);
- (2) The accrued interest on loans from RR being forgiven (although the full principal to be repaid);
- (3) RUI being able to borrow from the General Fund of the Treasury in the future, repayable with appropriate interest.
- (4) Advance quarterly tax transfers to be made, repayable with interest at the end of each quarter (the same procedure as provided for the Social Security trust funds).

I believe that the RUI benefit costs for the future will be reasonably well handled by the financing provisions contained in the pending bill that provide experience rating and automatic indexing of the taxable wage base. The existence of the present cash balance of about \$100 million is also helpful.

I strongly support this experience-rating procedure. However, I would prefer a somewhat stronger fail-safe feature. The bill now provides for a surcharge contribution rate when the balance in the fund is low -- namely, 2.5% when the balance is positive, but less than \$50 million, and 1.5% when the balance is at least \$50 million, but less than \$100 million (with both dollar figures being indexed to reflect increases in total covered payrolls). If the fund balance is negative (i.e., new loans have been obtained from RR), present law provides for a 3.5% surcharge tax rate, on a fixed \$7,000 wage base (which, illogically, differs slightly from the regular \$600 monthly base).

In my opinion, the proposed dollar limits for the surcharge rates are somewhat too low and could result in such rates going into effect too late to prevent financial difficulties. Also, the 3.5% surcharge rate in present law that is applicable when new loans from RR are outstanding is anomalously applied to a fixed \$7,000 wage base; this should apply to the same earnings base as all other RUI tax rates and should be merged with the proposed new schedule of surcharge tax rates.

I suggest the following schedule of surcharge rates (with the dollar amounts being adjusted in the future in the same manner as in H.R. 2167):

Net Assets of RUI Account (net of loans from RR)	Surcharge Rate
\$200-225 million	0.5%
175-200 million	1.0
150-175 million	1.5
100-150 million	2.0
50-100 million	2.5
0- 50 million	3.0
Negative	3.5

I also urge that reconsideration should be given to what I believe to be a desirable recommendation of the Committee that the Congress has previously turned down -- namely, advance quarterly tax transfers, which is a stabilizing device. This is an excellent safety-factor procedure which makes recognition of the fact that, although benefit payments flow out rather uniformly throughout a calendar quarter, contribution income flows in on a non-uniform pattern. This procedure has been provided for the Social Security program. It has no cost effect whatsoever to the General Fund of the Treasury, and will very likely be used, at most, only rarely.

The pending bill resolves almost all of the financing and benefit-design problems of the RUI program. However, one very significant problem still remains -- namely, how to deal with the large debt of RUI to RR that developed in the past. Such debt currently is about \$850 million. Although the repayment tax in present law will reduce this debt somewhat in the next four years, it will then begin to increase further, as the result of interest being compounded thereon. By the year 2000, this debt will amount to as much as \$1 billion.

Only three options are possible to solve this problem, and none are pleasant or painless. One way to handle at least part of the problem would be to obtain funds from sources outside of the RUI system -- as the Committee recommended, and as I believe is reasonable and proper. However, both Houses of Congress have, at various times, firmly rejected this approach.

The second way is to reduce benefit outgo. But this does not really seem feasible. The recommendations of the Committee and the pending bill would do so to some extent. Furthermore, the RUI benefits are by no means at an excessive level as compared with those under various state systems.

The third way is to increase the tax contribution income to the system. I reluctantly come to the conclusion that this is the only feasible course of action. Thus, we are faced with the difficult problem of having to raise a considerable amount of money over the next decade or so.

I believe that the present repayment tax schedule should be eliminated after 1987, and a new repayment tax basis should be adopted. This would parallel the recommendation of the Committee that a loan repayment tax at a level rate (with adjustment every three years, based on the past experience and on current estimates of the future experience), applicable to whatever the RUI taxable earnings base is, should be provided. The receipts therefrom should fully pay off the past debt, plus any interest accumulating on it in the future by the end of the year 2000.

I am not prepared to say exactly what level that repayment tax rate should be set at initially, beginning in 1988. This is a matter which properly is within the jurisdiction of the Chief Actuary of the Railroad Retirement Board. However, I would hazard the guess that such rate might be as high as 4% of RUI taxable payroll.

One should realize, however, that such a level, although appearing to be very high, is really not so much so when it is considered that the RUI taxable wage base is relatively low. Only about 22% of the total payroll of the industry is covered thereby, so that a tax rate of, say, 4½% on the RUI base is only 1% of total payroll. When the RUI wage base is measured against the Tier-I (or Social Security) base, the corresponding proportion is 24%, while against the Tier-II base, it is 27%.

I believe that it would be desirable to change the RUI taxable wage base for all purposes from the present unrealistically low level to either the Tier-I or Tier-II base and, at the same time, to reduce the tax rates so that the same overall impact on the taxpayers, as well the same income to the system, will occur. Specifically, the tax rates would then be about one-fourth of what they would be under the present basis for the wage base. Such a change would, of course, require similar action with regard to the benefits qualifying condition which is related to the wage base.

In closing, I might mention that several minor benefit changes in the RR system are included in the pending bill. These changes are desirable and should have no significant cost impact.

JOINT STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS, AND CHARLES I. HOPKINS, JR., CHAIRMAN, NATIONAL RAILWAY LABOR CONFERENCE

Mr. DEMPSEY. Thank you. I am William Dempsey, president of the Association of American Railroads.

With me is Charles Hopkins, chairman of the National Railway Labor Conference.

My association has responsibility for legislative matters. I will concentrate on what is the matter of concern for the committee and that is the question of repayment of the debt. We would be happy to answer any questions about the benefit portions of this bill which has been reported out unanimously by the Energy and Commerce Committee.

Our position, just to summarize it, and I will give you the reasons for it, is that the bill ought to be reported and enacted as it stands. We do support Mr. Chamberlain's recommendation that income tax revenues be continued to be deposited into the Railroad Retirement Account. We do not support his recommendation a repayment tax at this time be enacted by the Congress beyond fiscal year 1990.

We believe this is a difficult, complicated matter which has to do with allocation of burdens among the interested parties and that accordingly it should be dealt with by the new Railroad Retirement Commission we urge be endorsed by the Ways and Means Committee as recommended by the Subcommittee on Social Security. The Commission will report back no later than October 1, 1989, which would give time to deal with the extension of the repayment tax and appropriate allocation of burdens among the interested parties.

Let me just review briefly what has been happening here in terms of taxes and debts. Our problem, of course, emerged because of the steep recession of 1981-83. The Unemployment Act had been in good shape for 50 years before that time, but we lost more than 20 percent of our employees in that very brief period.

The the account simply couldn't take such a loss so that by the end of fiscal 1983 there was a debt of some \$575 million which since has been augmented by accumulating interest.

The Congress first came to grips with this problem in the Railroad Retirement Solvency Act of 1985. Now that act increased carrier taxes by 50 percent by increasing the taxable base from \$400 to \$600. It imposed the retirement tax which started out at 2 percent and then went up 0.3 percent a year through the first 9 months of 1990.

And it established the Railroad Unemployment Compensation Committee upon which Mr. Hopkins and I and Mr. Kilroy served with Dr. Myers as chairman.

That Committee reported back with an exhaustive set of recommendations in June of 1984 as Dr. Myers has indicated. The next thing that happened was the COBRA legislation which imposed a 3.5 percent prospective surcharge for any borrowings that were not promptly repaid after October 1985. That is not a problem.

We haven't had any borrowings and we don't expect there will be any through the year 2000. So we are dealing now with the debt

prior to October 1, 1985. As to that, the COBRA bill sharply increased the repayment tax so that in 1988 for example, it goes as high as 6 percent.

What will the effect be by 1990?

According to the estimates that the Board gives us, at that point the principal of the debt will have been almost virtually discharged.

That leaves us with the problem then of the interest on the debt, and that brings me to the central consideration, what should be done with respect to that question? The parties in the negotiations that were held, and they were difficult and complicated, as you can well appreciate, agreed as Dr. Myers indicated that the interest should be forgiven on the ground that this was simply a transfer of money from one account to another. In essence this represented a concession by labor, and this brings me again to the question that the chairlady asked—where would this money come from if not from a repayment tax?

Well, the answer was quite properly given. That is to say, that it would come from tier II taxes. Tier II taxes are borne 4.25 percent by the employees and 14.75 percent by employers, so roughly 22 percent of the debt burden would be borne by employees, and the balance by management.

That was a very significant concession on labor's part and it moved management in turn to make concessions with respect to such matters as increased benefits. So to drop that part of the package out gives us serious concern, because it does represent a shift in the allocation agreed to among the interested parties of something in the range of \$200 million which, is not an inconsiderable sum. That is especially true if one looks at the tax rates with which we are not dealing.

Since 1983, the employer's tax per employee has risen from \$384 a year to \$996 a year in 1988, a staggering increase, and then in the related area for retirement the combined taxes now, tier I and tier II, employee and employer, altogether represent 40 percent of tier II taxable payroll.

That is about 31 percent of total payroll. That is an enormous burden. And that is why the question of how much more burden should be imposed by way of taxes, whether it be unemployment taxes or railroad retirement taxes upon the carriers on the one hand, active employees on the other, changes in benefit structure with respect to prospective retirees, changes in benefit structure with respect to existing retirees are very, very difficult. All of that, it seems to us, ought to be dealt with in the context of the Railroad Retirement Commission.

That would maintain intact substantially the agreement that was arrived at between labor and management and while I appreciate that circumstances do change and parties are entitled to change their positions in this case, the question of the benefit provisions of this bill need not be embarrassed by debate about what ought to happen with respect to the repayment tax because that can be dealt with in ample time before the expiration of the existing tax in 1990.

[Joint statement of Mr. Dempsey and Mr. Hopkins follows:]

July 14, 1987

Before the
SUBCOMMITTEE ON PUBLIC ASSISTANCE AND UNEMPLOYMENT COMPENSATION
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

JOINT STATEMENT ON H.R. 2167, THE RAILROAD UNEMPLOYMENT INSURANCE
AND RETIREMENT IMPROVEMENT ACT OF 1987

by

WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

and

CHARLES I. HOPKINS, JR., CHAIRMAN, NATIONAL RAILWAY LABOR CONFERENCE

The Association of American Railroads represents almost all of the nation's Class I railroads in a wide variety of matters, including legislative matters, that concern the railroad industry. The National Railway Labor Conference represents almost all of the nation's Class I railroads in national collective bargaining with unions representing their employees and in regard to other matters concerning labor-management relations in the railroad industry, including negotiations with the unions upon joint recommendations to be made to the Congress for revisions of the railroad unemployment insurance system or of the railroad retirement system. Hence, we are the principal officers of the two railroad associations that are directly concerned with legislation affecting the railroad unemployment insurance and railroad retirement systems. In addition, we were the two management members of the Railroad Unemployment Compensation Committee ("RUC Committee"), established by the Congress to study the railroad unemployment insurance system and to report recommendations for legislation in regard thereto. We are making this statement on behalf of the Association of American Railroads, the National Railway Labor Conference and their member railroads.

H.R. 2167 has been favorably reported by the House Committee on Energy and Commerce, without dissent, in a Report that describes at length its background and provisions. H. Rept. No. 100-102 (Pt. 1, May 21, 1987). Both railroad management and railroad labor support the enactment of H.R. 2167, and insofar as we are aware there is no significant opposition to any of its provisions. We are advised, by the June 22, 1987 Release announcing this hearing on H.R. 2167, that the Committee on Ways and Means "has jurisdiction over the tax aspects of the railroad unemployment compensation program and is concerned about the debt that the unemployment compensation program owes to the railroad retirement program." Thus, we have been "encouraged to discuss ways this debt could be repaid by the year 2000, a goal that was mentioned in the Committee on Ways and Means' report on the Railroad Retirement Solvency Act of 1983 (P.L. 98-76)."

The principal of the debt thus referred to was incurred after 1980 and before October 1, 1985, to pay unemployment and sickness benefits at a time (primarily during the 1981-1983 recession) when the extent of unemployment in the railroad industry overwhelmed the ability of the railroad unemployment insurance system as then constituted fully to repay with interest

borrowings from the railroad retirement system that were necessary to enable full payment of unemployment and sickness benefits. No such borrowings have occurred since September 30, 1985, none are now anticipated (whether or not H.R. 2167 is enacted), and enactment of experience rating including possible surcharges as provided in H.R. 2167 should go far towards assuring that none will occur. In any event, the Congress already has enacted a special 3.5% surtax that will go into effect during a calendar year after a fiscal year in which any post-September 30, 1985 borrowings have not been repaid with interest, the proceeds of which are dedicated to such repayment.

At the same time, the Congress increased the rates of the Railroad Unemployment Repayment Tax (enacted in 1983), which is effective from July 1, 1986 through September 30, 1990, and the proceeds of which are dedicated to repayment of the pre-October 1, 1985 debt. Under both existing law and H.R. 2167, it is anticipated that the revenues from that tax, together with transfers of surplus contributions, will steadily reduce the amount of that debt (both principal and interest) until the Repayment Tax expires. H.R. 2167 does not provide for further repayment. However, by that time the total payments on the debt will approximate the recommendation by the Railroad Unemployment Compensation Committee under which only the principal would be repaid and accumulated interest would be forgiven.

Moreover, there is now need for -- and the railroads urge the establishment of -- a study commission to review the railroad retirement system and recommend to the Congress revisions thereof, or alternatives thereto, in view of predictions that the Railroad Retirement Account will run short of funds after the year 2000. The debt owed by the railroad unemployment insurance system is only a minor factor in that situation and full repayment of that debt would not delay the predicted bankruptcy of the Railroad Retirement Account by as much as a year under any set of reasonable employment assumptions. The study commission and the Congress, in light of its report and recommendation, most appropriately could consider what should be done towards repayment of the pre-October 1, 1985 debt following expiration of the Repayment Tax.

For these reasons, as more fully set forth below, the railroads urge that H.R. 2167 be enacted without any substantial change. We also urge that this be done with as little delay as possible so that the effective date of its provisions need not be further postponed.

Background Information

The Railroad Unemployment Insurance Act ("RUI Act") was enacted in 1938 to provide an unemployment compensation system, effective July 1, 1939, for unemployed workers in the railroad industry. 45 U.S.C. § 351 *et seq.* Thus, that system (which since 1947 also has provided sickness benefits) has been in existence for almost 50 years. The maximum unemployment or sickness daily benefit payable is (and since 1976 has been) \$25, the equivalent of \$125 per week. 45 U.S.C. § 352(a). Almost all beneficiaries receive the maximum amount. Each covered employer pays the same contribution rate, which is fixed for a calendar year by the Railroad Retirement Board at one of five potential levels ranging from 0.5% to 8%, depending upon the balance in the Railroad Unemployment Insurance Account ("RUI Account") as of the preceding September 30. If that balance is less than \$50 million, the rate is fixed at the 8% maximum (as has been true since 1980 and will continue to be true, if the law is not changed, as long as the debt to the railroad retirement system has not been fully repaid). The contribution rate fixed by the Board is applied to monthly compensation paid by an employer to each employee up to a

maximum of \$600 to determine the dollar amount of contributions payable by the employer. 45 U.S.C. § 358.

A borrowing authority is an essential feature of a rational unemployment compensation system as it permits benefits and tax levels to be maintained on a relatively even keel despite temporary swings in the unemployment rate. Section 10(d) of the RUI Act thus authorizes the RUI Account to borrow from the Railroad Retirement Account when necessary to assure payment of full unemployment and sickness benefits, which loans are repayable with interest generally equivalent to that earned by the Railroad Retirement Account on its investments. 45 U.S.C. § 360(d). The Railroad Retirement Account pays tier 2 and certain tier 1 railroad retirement benefits (those in excess of the benefits that the social security system would pay if applicable to railroad employment). See 45 U.S.C. § 231n. Those benefits are funded through tier 2 railroad retirement taxes paid by railroad employers (at a rate of 14.75%) and employees (at a rate of 4.25%) upon taxable annual compensation (\$32,700 in 1987). See 26 U.S.C. §§ 3201(b), 3221(b). In short, one account funded by the railroad industry is authorized to borrow from another account funded by the railroad industry.

This borrowing authority served its intended purpose without giving rise to any problems through the end of FY 1980. While borrowings often occurred, they always had been repaid with interest, and there were no outstanding loans at the end of either FY 1979 or FY 1980. See the Report of the Railroad Unemployment Compensation Committee (June 29, 1984), App. D, Table 4. However, the severe unemployment during the 1981-1983 recession was exacerbated in the railroad industry by the impact of federal legislation relating to the bankrupt Milwaukee and Rock Island railroads and to the termination of protection previously provided to Conrail employees. This resulted in a debt that grew beyond the ability of the RUI system as then constituted to repay. Railroad employment decreased by more than 20% from 503,000 in 1981 to 398,000 in 1983. *Id.*, Table 3. Unprecedented total benefit outlays, compounded by the high interest payable on borrowings necessary to pay those benefits, resulted in a debt to the Railroad Retirement Account amounting to \$115 million as of the end of FY 1981, \$286 million as of the end of FY 1982, and \$575 million as of the end of FY 1983. *Id.*, Table 4.

That essentially was the situation when the Congress first confronted the problem in the Railroad Retirement Solvency Act of 1983 (P.L. 98-76, "1983 Solvency Act"). As its title indicates, that statute principally was concerned with the solvency of the railroad retirement system. However, primarily at the instigation of the Ways and Means Committee but with the support of railroad management and labor, the 1983 Solvency Act also included measures directed towards improving the financial condition of the railroad unemployment insurance system, at least on an interim basis. In that regard, the Act (1) increased the maximum monthly taxable compensation from \$400 to \$600; (2) terminated the authority of the RUI Account to borrow from the Railroad Retirement Account effective September 30, 1985; and (3) enacted a Railroad Unemployment Repayment Tax (as § 3321 I.R.C.) with the revenues therefrom to be applied towards repayment of the pre-October 30, 1985 debt owed by the RUI Account to the Railroad Retirement Account. 97 Stat. 426-430, 432, 440-441.

In addition, the 1983 Solvency Act provided for the establishment of a Railroad Unemployment Compensation Committee ("RUC Committee") "for the purpose of reviewing all aspects of the railroad unemployment program and submitting a report to Congress . . . containing (a) recommendations based on its review of the program and (b) recommended adjustments in contributions and benefits which will enable the . . . program to repay all loans from the Railroad Retirement Account by the end of the year 2000." H. Rept. No. 98-30

(Pt. 2, 1983) at 22. See 97 Stat. 441-442. It was not anticipated that the increase in the monthly maximum on taxable compensation plus the Repayment Tax would permit more than "partial repayment of the Unemployment Compensation System's debt to the Railroad Retirement System." *Id.* at 20. Moreover, "the effective date of the repayment tax [was] delayed until July 1, 1986, and the tax is allowed to expire September 30, 1990, in order to demonstrate to rail management and labor that the Committee will give careful consideration to any alternative mechanism for the repayment of . . . retirement account loans, or any modification in the repayment tax, recommended in the report of the" RUC Committee. *Id.* at 39. Similarly, the termination of the borrowing authority of the RUI Account as of September 30, 1985 reflected a determination that future "such borrowing authority should not be provided until there has been sufficient time and opportunity for rail labor, rail management, and the Congress to consider alternative measures for dealing with the insolvency of" the RUI system. *Id.* at 41.

The RUC Committee was composed of two representatives of rail management, two representatives of rail labor, and a neutral Chairman (Dr. Robert Myers). Its June 29, 1984 Report to the Congress contained a "consensus package" of recommendations that, among other things, would increase the maximum on employer contributions to 12% of taxable compensation with experience rating to determine the actual rate (subject to that maximum) payable by an individual employer; provide for comparable indexing of the maximum daily benefit payable and of the monthly taxable compensation base; tighten certain eligibility requirements; provide a new borrowing authority; and provide for surcharges (ranging from 1.5% to 3.5%) to be added to experience ratings (subject to the 12% maximum) in the year after a September 30 in which the balance in the RUI Account fell below specified levels so as to minimize the need for future borrowing and to ensure repayment with interest of any loans that did occur. In regard to the pre-October 1, 1985 debt, the RUC Committee recommended that the principal be repaid by the end of the year 2000 through supplemental contributions (not subject to the 12% maximum) in lieu of the Repayment Tax enacted by the 1983 Solvency Act and that all interest accrued since 1980 be forgiven.

Both railroad management and railroad labor supported enactment by the 99th Congress of legislation that would have implemented those and other recommendations by the RUC Committee with one possible modification. Section 502 of the 1983 Solvency Act requires the Railroad Retirement Board to submit a report to the Congress, on or before July 1 of 1985 and of each subsequent year, in regard to "the actuarial status of the railroad retirement system" which would include a recommendation as to whether any part of tier 2 railroad retirement taxes "should be diverted to the Railroad Unemployment Insurance Account to aid in the repayment of its debt to the Railroad Retirement Account." 97 Stat. 440. In the first such report, included in the Board's Sixteenth Actuarial Valuation of the railroad retirement system, the Board in 1985 endorsed a recommendation by its Chief Actuary that an amount equivalent to "one percent of tier 2 payroll be diverted . . . to aid in the repayment of the debt" owed by the RUI Account to the Railroad Retirement Account. Sixteenth Actuarial Valuation, Part C, at 17. Railroad labor and management supported that method of repaying the pre-October 1, 1985 debt, which together with the Repayment Tax would have assured repayment of both the principal and interest outstanding prior to the end of the year 2000, as an acceptable alternative to the recommendation by the RUC Committee in that regard.

Although hearings were held by concerned committees (including a hearing on July 15, 1985 by this Subcommittee), for the most part the 99th Congress did not complete action upon legislation implementing recommendations of the RUC Committee or otherwise disposing of the matters involved. The Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272, "COBRA"),

however, did enact legislation restoring the borrowing authority of the RUI Account and further providing for repayment of the pre-October 1, 1985 debt.

Section 13302 of COBRA repealed the provision in the 1983 Solvency Act terminating as of September 30, 1985 the authority of the RUI Account to borrow from the Railroad Retirement Account, and thus restored that borrowing authority in the same form as it previously existed. 100 Stat. 327. In addition, Sec. 13301 of COBRA enacted (as § 3321(c)(3) I.R.C.) a 3.5% surtax rate, applicable to annual compensation up to \$7,000, to be paid by railroad employers in a calendar year after a September 30 on which all post-September 30, 1985 borrowings by the RUI Account have not been repaid with interest. 100 Stat. 325-326. The proceeds from that surtax are dedicated to repayment of any outstanding post-September 30, 1985 loans. No such loans were outstanding as of September 30, 1986, and it is not anticipated that any will be as of a September 30 at least through the year 2000 so as to activate that surtax.

In regard to the pre-October 1, 1985 debt, Sec. 13301 of COBRA revised the Railroad Unemployment Repayment Tax enacted by the 1983 Solvency Act so as to increase the tax rate for the last six months of 1986 from 2% to 4.3%, increase the tax rate for 1987 from 2.3% to 4.7%, and increase the tax rate for 1988 from 2.6% to 6.0%. The Repayment Tax as so revised continues to be effective from July 1, 1986 through September 30, 1990, when it will expire, and continues to provide for a tax rate of 2.9% in 1989 and 3.2% during the first nine months of 1990. Those rates are applicable to annual compensation paid to an employee up to a \$7,000 maximum. The revenues continue to be dedicated to repayment of the pre-October 1, 1985 debt. 100 Stat. 325-326. The House Ways and Means Committee, which originated those revisions of the Repayment Tax, estimated that the additional revenues would amount to approximately \$200 million. H. Rept. No. 99-241 (Pt. 1, 1985) at 9. The Senate Finance Committee, which recommended identical revisions of the Repayment Tax, noted that the tax "is not sufficient to pay the loans outstanding" and recommended that the legislation also provide for diversion of tier 2 railroad retirement tax revenues sufficient to repay the pre-October 30, 1985 debt in full by 1990. See S. Rept. No. 99-146 (1985) at 391-392. The Conference Committee dropped that provision, however, and it was not included in COBRA as enacted. See H. Rept. No. 99-453 (Conf. Rept. 1985) at 631-632.

On April 15, 1986, the Senate Labor and Human Resources Committee reported S. 1968; and on September 30, 1986, the House Energy and Commerce Committee reported H.R. 5501. See S. Rept. No. 99-281 and H. Rept. No. 99-931 (Pt. 1). In general, those bills would have implemented recommendations of the RUC Committee that were not touched upon by COBRA. In addition, H.R. 5501 reflected an August 1986 railroad labor-management agreement upon some modification of recommended changes in the RUI Act and upon some relatively minor changes in the Railroad Retirement Act of 1974, in view of the delay that had occurred since the Report of the RUC Committee and other circumstances. The 99th Congress adjourned, however, before further action could be taken upon the bills thus reported. H.R. 2167 is identical in substance to H.R. 5501 apart from a revision of one of the proposed amendments to the Railroad Retirement Act. We note that enactment prior to July 1, 1987 was assumed when H.R. 2167 was drafted, so that some of the effective dates provided therein (and noted below) will have to be changed if retroactive application is to be avoided.

H.R. 2167

As we noted at the outset of this Statement, H.R. 2167 has been favorably reported by a unanimous Energy and Commerce Committee in a Report that extensively describes its provisions and their justification, its enactment is supported by railroad labor as well as by railroad management, there does not appear to be any significant opposition to any of its provisions, and this Subcommittee has indicated that its primary concern is with repayment of the pre-October 1, 1985 debt rather than with the substance of the provisions in H.R. 2167. For present purposes, therefore, it appears to be sufficient briefly to summarize rather than to explain at length the provisions of the bill and the reasons why they should be enacted.

Section 101 provides for indexing the monthly compensation base (now \$600) for calendar years after enactment, by two-thirds of the percentage increase in the tax base for tier 1 railroad retirement taxes and for social security taxes (and thus to increases in general wage levels). Since maximum daily benefits will be similarly indexed, this provision in itself will go far towards assuring that the contributions payable by the railroads will be adequate to fund the unemployment and sickness benefits payable under the amended RUI Act. Section 101 also contains certain conforming amendments, including requirements that the Railroad Retirement Board make and give adequate notice of various computations relating to future changes resulting from the indexing of the monthly compensation base. In so providing, Section 101 accords with recommendations of the RUC Committee.

Section 102 provides for experience rating; i.e., that the contribution rate payable by a particular employer in a calendar year largely will depend upon the prior unemployment (and sickness) experience of its own work force. Experience rating will be phased in commencing with the contribution rates payable in 1990 (prior to which all employers will continue to pay the current 8% maximum), and will be fully applicable in 1992 and subsequent years (except as to new employers for which a phase-in period also is provided). By thus tying contribution rates to experience (as is done under the federal/state unemployment compensation system), employers will be encouraged both to keep employment as high as otherwise is feasible and to police benefit claims to assure that they are justifiable. The latter consequence of experience rating will be facilitated by Section 104 of the bill, under which employers will have a right (which they do not now have, but which employers subject to the federal/state unemployment compensation system do have) to participate in the claims process, including the right to appeal an allowance of a claim believed to be improper up to the Railroad Retirement Board and from the Board to the courts. In addition to according with recommendations of the RUC Committee, these provisions in the long run should reduce the costs of the system.

The experience rate payable by a particular employer will be subject to a 12% maximum, except that the maximum on contributions will be 9% in calendar years during which the 3.5% surcharge enacted by COBRA is in effect (for purposes of assuring repayment of post September 30, 1985 borrowings). Since that surcharge tax is applicable to a \$7000 annual compensation base, while experience rates for contributions are applicable to a \$600 monthly compensation base that will be indexed as noted above, the resulting 12.5% maximum total rate roughly is equivalent to the 12% maximum applicable when no surcharge tax is in effect. In addition to recommending the 12% maximum, the RUC Committee recommended that a surcharge of 1.5%, 2.5% or 3.5% be added to experience rates during a calendar year after a fiscal year in which the balance in the RUI Account is reduced below specified (and indexed) levels. The 3.5% surcharge thus recommended in substantial effect has been implemented by the 3.5% surcharge tax enacted by COBRA, but Section 102 of the bill

continues to provide for a 1.5% or 2.5% increase in the contribution rate otherwise payable by employers (subject to the maximum), if the balance in the RUI Account is reduced to dangerously low levels even though it remains positive.

In addition, if the rate payable by a particular employer during a calendar year is reduced by reason of the maximum, the resulting loss of revenues will initially be made up by employers below the maximum, although eventually recouped from the particular employer when its experience rating otherwise would decrease below the maximum. This feature, together with the 1.5% or 2.5% contribution surcharges, and the general relationship of contribution rates to experience, make it unlikely that there will be any future need for borrowings from the Railroad Retirement Account, and virtually assure that any such borrowings will be repaid without resort to the 3.5% surcharge tax enacted by COBRA. Thus, barring a wholesale collapse of the railroad industry, if H.R. 2167 is enacted, the future revenues of the railroad unemployment insurance system almost certainly will be adequate to fund the benefits provided thereunder. Had those provisions been in effect during the last decade, there would not have been a debt problem.

Section 103 of the bill increases from 0.5% to 0.65% the portion of the contribution rate that is allocated to the payment of administrative costs, effective October 1, 1987. This provision also accords with a recommendation of the RUC Committee, which agreed "that there is need for more" thorough monitoring of the claims-handling process than is now possible because of personnel and budgetary limitations imposed upon the Railroad Retirement Board" (Report, at 2-9). As we already have noted, Section 104 will permit the railroads to participate in that claims-handling process including appeals from the allowance of claims.

Section 201 of H.R. 2167 will increase the maximum daily benefit from \$25 to \$30, effective July 1, 1987, and provide for two-thirds indexing of the \$25 amount comparable to the indexing of the monthly compensation base. The RUC Committee recommended an initial increase to \$27, which amount was increased to \$30 by the August 1986 labor-management agreement. The Railroad Retirement Board has estimated that the maximum daily amount will remain at \$30 until 1991, when it will increase (by reason of indexing of the \$25 amount) to \$31, and that it will further increase from time to time so as to reach \$42 in the year 2000. Comparable estimates for the indexed monthly compensation base are that it will increase to \$760 by 1991 and to \$1020 by 2000.

In addition, Section 201 will provide for what is in effect a one-week waiting period before either unemployment or sickness benefits are payable in a benefit year, effective July 1, 1987. Those benefits are now payable for ten of the 14 calendar days in a registration period, which allows for the four rest or off days that normally occur in such a period and thus does not provide a true waiting period. The RUC Committee recommended that, with respect to an employee's first registration period in a benefit year, benefits be payable after seven days so as to provide an effective three-day waiting period. In accordance with the August 1986 labor-management agreement, under H.R. 2167 benefits will be payable after nine days in that first registration period, so as to provide an effective waiting period equivalent to the one-week waiting period provided by most state unemployment compensation systems. This provision will apply separately to unemployment benefits and sickness benefits so that as to each it will be applicable in the employee's first registration period in a benefit year. Thereafter, in that benefit year the existing provision, under which benefits are payable after four days in each 14-days registration period, will continue to apply.

Section 202 will increase the creditable compensation in a base year (calendar years) that is necessary to qualify for benefits in the following benefit year (commencing on July 1 and ending on June 30), from \$1500 to five times monthly creditable compensation (i.e., the \$600 monthly compensation base as indexed). In addition, the employee must have received compensation in at least six months of the base year. This provision, which was recommended by the RUC Committee, will provide greater assurance that benefits are payable only to regular employees and will result in substantial savings. The bill provides that it will become effective as of the 1986 base year, which means that it will first affect benefit eligibility in the benefit year commencing July 1, 1987.

Section 203 will increase the "subsidiary remuneration" that an employee may earn without being disqualified for an unemployment or sickness benefit from an average of \$10 to an average of \$15 per day. While not recommended by the RUC Committee, this increase was one of the revisions agreed upon by railroad labor and management in August of 1986.

The remaining provisions (Title III) of H.R. 2167 amend the Railroad Retirement Act of 1974. Hence, they were not among the matters considered or subject to recommendations by the RUC Committee. They generally involve aspects of the railroad retirement system that have given rise to considerable employee dissatisfaction and which, according to Railroad Retirement Board actuaries, can be corrected without significantly increasing the costs of the railroad retirement system. Thus, railroad management agreed to join railroad labor in supporting these amendments as a part of the overall package included in H.R. 2167, in return for labor's agreement to support enactment of the entire package as now embodied in H.R. 2167.

Very generally, those provisions will provide a lump-sum payment which is intended to correct an anomaly resulting from the annualization of the taxable and creditable railroad retirement compensation base by the 1983 Solvency Act (Sec. 301); will repeal the disqualification for railroad retirement benefits that now results if a retiree returns to work for the "last employer" he had prior to retirement and substitutes a deduction based upon compensation from such work (Sec. 302), although work for any railroad will continue to be a disqualification; will increase the compensation that a disability annuitant may earn without being disqualified (Sec. 303); and will make the period between the end of World War II and the commencement of the Korean War a "war service period" for purposes of crediting military service (Sec. 304). Each of those provisions is more fully described in H. Rept. No. 100-102 (Pt. 1), at 19-21.

Repayment of the Debt to the Railroad Retirement System

As we have noted, this debt consists entirely of borrowings to pay benefits after 1980 and before October 1, 1985, and of accumulated interest. The RUC Committee recommended that the principal amount borrowed for the payment of benefits be repaid by the end of the year 2000, and that the accumulated interest be forgiven. We are advised by the staff of the Railroad Retirement Board that such principal amount is \$525.6 million, that the revenues from the Repayment Tax are estimated to total \$467.8 when it expires in 1990, and that the Board in recent months has transferred \$19.5 million (in two payments, one for \$13 million and one for \$6.5 million) from surplus contribution revenues to the Railroad Retirement Account in partial repayment of that debt. Thus, even assuming no further such transfers, payments on the debt are estimated to amount to some \$487.3 million, or only \$38.3 less than the principal amount of the debt. It may be possible to transfer that amount

from surplus contributions before experience rating begins to take effect and any surplus contributions are reflected therein.

Moreover, the cumulative effect of the 50% increase in employer contributions, resulting from the increase in the taxable compensation base by the 1983 Solvency Act, plus the Repayment Tax as revised by COBRA, has been to raise maximum employer contributions or taxes per employee from \$384 per year in 1983 to \$905 per year in 1987 and \$996 in 1988. Hence, the railroads already have been subjected to a drastic increase in their unemployment compensation tax burden.

Both railroad labor and railroad management have supported the recommendation by the RUC Committee that accumulated interest be forgiven, and it is an integral part of their August 1986 agreement. In essence, all that is involved is transactions between two railroad industry accounts, both of which are supported through payroll taxes upon compensation earned through employment in the industry. While unemployment contributions or taxes are paid only by employers, and both employers and employees pay railroad retirement taxes (although at different rates), that was an important aspect of the agreement with railroad labor insofar as railroad management is concerned. If the Congress nonetheless requires payment of the accumulated interest from unemployment taxes or contributions imposed upon the railroads alone, the railroads will be deprived of an anticipated benefit of their agreement with the labor organizations.

It is true that the railroad retirement system, which appeared to be financially sound when the RUC Committee made its report, once again is faced with financial difficulties. The recent deterioration in the financial solvency of that system is reflected in actuarial estimates and recommendations by the Chief Actuary of the Railroad Retirement Board contained in the Board's annual reports to the Congress pursuant to Section 502 of the 1983 Solvency Act.

In the 1985 Section 502 Report, the Chief Actuary assumed that employment levels would decline at the rate of 2%, 3%, or 4%, annually, from a base of 395,000 employees in 1984, and concluded that it was feasible to divert a portion of tier 2 tax revenues to repayment of the debt owed by the railroad unemployment insurance system. Sixteenth Actuarial Valuation, Part C, at 2, 3. In the 1986 Report, the Chief Actuary assumed that employment levels would decline at the rate of 3.5%, 4%, or 4.5% annually, from a base of 343,000 in 1986. He predicted that the Railroad Retirement Account would run short of funds in 2007, 2005, or 2003, respectively, under those assumptions, and suggested that tier 2 tax rates be increased 1.5% on January 1, 1985 and another 1.5% on January 1, 1988 (or the equivalent in benefit reductions). Annual Actuarial Report, at 2-3, 4, 5, and Table 2. In the 1987 Section 502 Report, released last month, the Chief Actuary assumed that employment levels will decline at rates of 3.5%, 4.5% or 5.5%, annually, from a base of 310,000 in 1987. Under those assumptions, he estimated that the Railroad Retirement Account will run short of funds in 2007, 2003 or 2001, respectively, and suggested a tier 2 tax rate increase (or its equivalent) of 4.5% on January 1, 1988. Annual Actuarial Report, at 2, 4, and Table 2.

Actuarial estimates by their nature are not very reliable, since they necessarily are based upon assumptions as to future occurrences. We do not doubt, however, that the problem is a serious one. Nevertheless, it is not a problem that requires immediate action by the Congress, since, under the most pessimistic assumptions, the Railroad Retirement Account will not run short of funds for at least a decade. Moreover, that problem is not attributable in any significant way to the loans made to the RUI Account and it cannot

be prevented or remedied to any significant extent by repayment in full of the debt including accumulated interest.

The driving factor behind the deterioration in the financial condition of the Railroad Retirement Account has been the continuing declines in railroad employment and the future assumptions made in that regard for purposes of actuarial estimates. Each of the foregoing actuarial predictions assumed no change in existing law, and thus that the debt would not be fully repaid. Assuming no further transfers from surplus contributions, the Board's actuaries estimate that the unpaid debt including accumulated interest will amount to about \$1 billion in 2000. If that entire amount were paid into the Railroad Retirement Account, it would delay the shortfalls in funds, predicted in the 1987 Section 502 Report, by less than one year, depending upon the employment assumption. The estimated shortfall in the first deficit year ranges between \$332 and \$880 million, and the deficit thereafter is estimated to increase by about \$1.5 billion each year.

The railroads have concluded that the problems of the railroad retirement system are so fundamental and complex, and involve so many diverse interests and considerations, that the Congress once again should establish a commission to conduct a throughgoing study of that system and to submit recommendations for remedial legislation to the Congress. The Report of the Commission on Railroad Retirement, established by P.L. 91-377 in 1970 (84 Stat. 792-794), was instrumental to the restructuring of the railroad retirement system by the Railroad Retirement Act of 1974. Without that restructuring, the system would have gone bankrupt many years ago, but it now seems clear that it no longer suffices to avoid financial crises and that limited responses, such as were enacted in 1981 and 1983, at best only put off more fundamental changes for a few years.

We note that the Subcommittee on Social Security, in a markup session on July 1, 1987, approved budget reconciliation legislation that, among other things, would establish such a commission with directions to report to the Congress by October 1, 1989. Such a commission if established should include on its agenda consideration of the unrepaid debt owed by the railroad unemployment insurance, and should report its recommendations in that, as well as in other, regards well before the Repayment Tax expires on September 30, 1990. We therefore urge the members of this Subcommittee to support approval by the full Committee and by the Congress of legislation establishing such a study commission.

The study that we recommend also should include an in-depth analysis of anticipated future trends in railroad employment including the effect thereon of potential legislative actions. The financial problems of the railroad retirement system are so severe, moreover, that no source of relief can be overlooked. The system suffers from a fundamental imbalance in that it now supports three beneficiaries for each current employee, while the social security system -- which itself has problems -- has only one beneficiary for three current employees. Moreover, while both railroad retirement and social security are "pay-as-you-go" systems in which payroll taxes on the compensation of current employees are used to finance the benefits for current beneficiaries, that factor bears much more heavily upon the railroad retirement system. The railroad industry is and for a long time has been declining with almost no growth sectors. While the social security system also has its declining industries (such as steel and textiles), it also includes growth sectors of the economy (like the computer industry) which provide new employees and give rise to additional payroll taxes that help carry the benefits paid to retirees from declining industries.

Furthermore, railroad retirement taxes already have reached such extraordinarily high levels that the financial problems of the system cannot reasonably or practicably be remedied through the expedient of increasing those taxes. Both the railroads and their employees pay tier 1 taxes equivalent to social security taxes and thus at a rate of 7.15% each on taxable compensation (\$43,800 in 1987), already scheduled to increase to 7.51% in 1988 and 7.65% in 1990. 26 U.S.C. §§ 3201(a) and 3221(a). Tier 2 taxes now are 14.75% of taxable compensation in regard to employers and 4.25% in regard to employees, and employers also pay a supplemental tax fixed quarterly by the Railroad Retirement Board "for each man-hour for which compensation is paid" at a level (now 24 cents per man-hour) sufficient to fund the cost of certain tier 2 supplemental benefits. 26 U.S.C. §§ 3201(b) and 3221(b) and (c). The combined tier 1, tier 2 and supplemental taxes payable by the railroads in 1987 amounts to 26.2% of tier 2 taxable compensation, the combined tier 1 and tier 2 taxes payable by railroad employees in 1987 amounts to 13.8% of tier 2 taxable compensation, and the 1987 total for the railroad industry thus comes to 40% of tier 2 taxable payroll, which is equivalent to 31% of total payroll.

It should be noted that increases in productivity have not resulted in concomitant increases in railroad profits which could be used to pay additional taxes. Rather, they have been translated primarily into rate reductions as the railroads have struggled to maintain their traffic base in the face of motor carrier and other competition at a time when there has been a fundamental shift in the economy away from heavy industry and thus from the types of traffic for which the railroads in general traditionally have handled and are best equipped to compete. Indeed, since 1984 railroad revenue has been falling faster than expenses. Increases in the railroad retirement taxes paid by the railroads will further handicap their efforts to compete for traffic and thus could lead to further reductions in employment that otherwise would not occur.

Hence, any long-term solution to the problems of the railroad retirement system requires the most careful and thorough consideration possible of all relevant information and proposals. While the Congress of course would not be bound by any recommendations that result, surely it will benefit from the report and recommendations of a knowledgeable study commission aided by expert actuarial and other advice as well as the practical input of railroad management and labor. We urge that further repayment of the pre-October 1, 1985 debt be included in that study, and that no additional legislation be enacted in that regard pending the report of the study commission.

Conclusion

For the reasons stated above, we urge that H.R. 2167 be approved by this Subcommittee and by the full Committee on Ways and Means, and that it be enacted by the Congress without significant change. That should place the railroad unemployment insurance system on a sound financial basis, while providing adequate unemployment and sickness benefits, for the foreseeable future.

Although the issue is not immediately before this Subcommittee, we also urge its members as part of the full Ways and Means Committee to support, and the Congress to enact, legislation to establish a commission to study and to make recommendations in regard to the railroad retirement system. Among other things, that commission should consider the unpaid debt owed by the railroad unemployment insurance system, and no further legislative action should be taken in regard to that matter pending the commission's report and recommendations.

July 29, 1987

SUPPLEMENT TO THE JOINT STATEMENT BY WILLIAM H. DEMPSEY
AND CHARLES I. HOPKINS, JR., ON H.R. 2167, BEFORE THE
SUBCOMMITTEE ON PUBLIC ASSISTANCE AND UNEMPLOYMENT COMPENSATION
OF THE COMMITTEE ON WAYS AND MEANS

In the July 14, 1987 hearings before the Subcommittee, the Long Island Rail Road, New Jersey Transit Rail Operations, and Southeastern Pennsylvania Transportation Authority submitted Statements urging that they and other publicly-operated commuter railroads be exempted from the Railroad Retirement Repayment Tax and that experience rating as provided in H.R. 2167 be expedited as to such commuter railroads. In addition, the Statement submitted on behalf of the Long Island went even further to urge that the commuter railroads be exempted entirely from the coverage of the railroad unemployment insurance system. Since we had not been forewarned of those requests and they were not addressed in the Joint Statement that we submitted to the Subcommittee on July 14, 1987, on behalf of the Association of American Railroads, the National Railway Labor Conference and their member railroads, we address them in this Supplement. We urge that those requests be rejected and that H.R. 2167 be enacted without significant change in those or any other regards.

In essence, the basis for those requests asserted by the commuter railroads is that their employment is increasing, as contrasted to the declining employment on the freight railroads, so that their employees receive relatively less benefits as compared to taxes paid by the commuter railroads than is true with respect to the freight railroads and their employees. They assert that, in consequence, the publicly-operated commuter authorities are compelled to subsidize the payment of unemployment benefits and sickness benefits under the RUI system to individuals who worked for the privately-owned freight railroads. However, some employers subject to a unitary system -- such as the RUI system, the railroad retirement system and the social security system -- always can make similar assertions. To give credence to such arguments now, with respect to a system that has been in existence for almost 50 years, would be grossly unfair to the other participants in the system and would create a precedent that could lead to the breakup of the railroad retirement and social security systems as well as the RUI system.

Since its enactment in 1938, the Railroad Unemployment Insurance Act has applied to all railroads, regardless of whether freight or passenger or both and regardless of whether privately or publicly owned or operated. The coverage of the railroad retirement system is identical and such coverage was patterned after the coverage of the Railway Labor Act (which governs collective bargaining in the railroad industry) as enacted in 1926. See, e.g., Railroad Board v. Duquesne Co., 326 U.S. 446, 451 (1946). The Long Island always has been subject to those statutes. See Transportation Union v. Long Island R. Co., 455 U.S. 678 (1982). When the Congress in NERSA expressly provided for the transfer of Conrail's commuter service to State commuter authorities (such as NJ Transit and SEPTA) on January 1, 1983, it also provided for the transfer to them of Conrail employees needed to conduct their commuter operations. 45 U.S.C. § 558. Conrail or its predecessors and their employees engaged in commuter operations also had been covered by those railroad statutes from the beginning.

Furthermore, in 1983 the (P.L. 97-468) Congress expressly provided that the commuter authorities shall be "subject to . . . the Railway Labor Act, . . . , the Railroad Retirement Act of 1974 . . . , the Railroad Retirement Tax Act . . . , and the Railroad Unemployment Insurance Act" 45 U.S.C. § 591. Hence, the commuter railroads in effect are requesting

the Congress to reverse a determination that it made only four years ago. That is so even though the decline in employment on most freight railroads, and the relative stability of or increased employment in commuter operations, was as true then as it is now. Indeed, railroad employment as a whole decreased by more than 20% between 1981 and 1983.

Among other things, H.R. 2167 proposes to amend the RUI Act so as to provide for experience rating which will be phased in over a three-year period commencing in 1990. Such a phase-in period is necessary to accumulate the experience, including reporting to the Railroad Retirement Board of adequate information in regard thereto, upon which the proposed system of experience rating will be based. The delay until 1990 in the commencement of the phase-in period was requested by the Railroad Retirement Board for administrative reasons. Keeping the necessary records (which will commence in 1989) and making the necessary computation in regard to each covered employer is a large and complex administrative task, which should be adequately and carefully prepared for so that it can be performed accurately. Expedition of experience rating in regard to the commuter railroads will complicate that task, and perhaps further delay it in regard to the other railroads, as well as establishing what in effect will be a separate system for those railroads during the interim. There is no justification for treating the commuter railroads separately from the other railroads in those as well as in other regards.

The revenues from the Railroad Unemployment Repayment Tax are dedicated to the repayment of a debt, incurred prior to October 1, 1985, owed by the RUI system to the Railroad Retirement system (including interest that has continued to accumulate). That debt was incurred in order to pay full unemployment and sickness benefits after 1980 and before October 1, 1985. The Long Island was covered by the RUI system throughout that period, and while the commuter authorities were covered only part of that period, their predecessor (Conrail) was covered during the remaining portion of the period. When that tax was enacted in 1983 (by the Railroad Retirement Solvency Act of 1983, P.L. 98-76), and when it was revised in 1986 (by COBRA, P.L. 99-272), the Congress made it applicable to all railroads including the commuter railroads. Indeed, it is applicable to freight railroads newly established in recent years (such as numerous short-line or regional railroads) who could also make a case for exemption. This simply reflects the fact that since the debt was incurred by a unitary system applicable to the railroad industry as a whole, any repayment should fall upon the railroad industry as a whole regardless of special circumstances applicable to particular railroads.

Exemption of the commuter railroads from that tax would reduce the revenues available to repay the debt and would increase the burden on other railroads (including newly-created railroads) if full repayment is required. Exemption of the commuter railroads from the RUI system or, to a lesser degree, an expedition of experience rating as to these railroads alone also could increase the tax burden on other railroads if not offset by a decrease in benefit levels. The extension of the precedent that would be set to the railroad retirement system would exacerbate the financial problems of that system, which already are serious. Moreover, such action might afford a broader precedent for excluding or otherwise specially treating employers who can establish that they receive less for their money than others. Some employers always will be in a position to make that claim in regard to social security as well as in regard to railroad retirement and to the RUI system. To exempt employers on that basis would contradict the fundamental and long-established premises of those systems and could eventually lead to their destruction. The Congress should not establish such a precedent, and thus should reject the requests of the commuter railroads in that regard. Rather, for the reasons set forth in our joint statement as supplemented hearing, H.R. 2167 should be enacted without significant change.

Mr. PEASE [presiding]. Thank you very much, Mr. Dempsey. We will next hear from Charles Hopkins.

Mr. HOPKINS. Mr. Dempsey and I have submitted a joint statement.

Mr. PEASE. We don't need to hear from you?

Mr. HOPKINS. No, I will be available for questions.

Mr. PEASE. OK, fine, we appreciate that. Mr. Kilroy?

STATEMENT OF RICHARD I. KILROY, CHAIRMAN, RAILWAY LABOR EXECUTIVES' ASSOCIATION, AND PRESIDENT, BROTHERHOOD OF RAILWAY & AIRLINE CLERKS

Mr. KILROY. Thank you, Mr. Chairman. I am Richard Kilroy, chairman of the Railway Labor Executives' Association, international president of the Brotherhood of Railway and Airline Clerks, and today I am accompanied by R. T. Bates, president of the Brotherhood of Railroad Signalmen and chairman of the RLEA Committee on Railroad Retirement and Unemployment Compensation, and James R. Snyder, chairman, RLEA Committee on Legislation.

Mr. Chairman, the RLEA appreciates the opportunity to present its views on a subject of urgent interest to railroad employees particularly at this time when furloughs from railroad employment are soaring and railroad officials are making public predictions of further cuts in railroad employment of up to 25 percent.

It has now been more than 3 years since the report of the Railroad Unemployment Compensation Committee established by the Congress in 1983, was filed with the Congress. I had the privilege to serve on that Committee and in our report, labor and management had agreed upon what came to be called a consensus package of benefit and tax changes to preserve our railroad unemployment compensation system.

That agreed program for legislation has been varied from time to time since 1984 as this committee and the Committee on Energy and Commerce indicated concerns about various provisions. Labor and management supported H.R. 2167 as recently reported out of the Committee on Energy and Commerce.

While changes have been made in the law since 1984 relating to the revenue or tax aspects of our railroad unemployment compensation system, no modifications have been made on the benefits side of the system and our employees desperately require the enactment of those benefits which have been so long delayed.

The RLEA respectfully urges that swift action be taken by this subcommittee and the full committee to report out a bill which can be quickly enacted into law.

The RLEA is most concerned about the continued viability of our railroad retirement system and the debt owed that system by the railroads as the result of their borrowing from the retirement trust fund to pay unemployment compensation to the tens of thousands of employees laid off by the railroads. These furloughs were, and are, primarily the result of the subcontracting of railroad work to nonrailroad companies, mergers, abandonments and sales of lines of railroads to newly formed companies which do not hire the railroad employees formerly performing the work in connection with the lines sold.

We agree that the debt should be repaid. It can be repaid by the year 2000, so we are informed, if the repayment tax is not discontinued on September 30, 1988, but is continued until 2000 with the rate for 1990 and each year thereafter set at 4.3 percent. It would also be extremely helpful to the overall system if the income tax revenues on tier II pensions, which are currently being paid into the railroad retirement trust fund, are not diverted to the general fund on October 1, 1988, or when the amount reaches \$877 million, as presently provided in the law. We strongly recommend that the October 1, 1988, date and the \$877 million cap be repealed and that the revenues from taxes on tier II continue to be credited to the trust fund.

The railroad unemployment compensation system of this country worked extremely well for over 45 years. A precipitous drop in railroad employment over a relatively short period of time has created a problem which can be solved. The system can be made to work satisfactorily. It is certainly far superior to the alternative offered by the administration.

The RLEA strenuously opposes placing railroad employees in Federal/State unemployment systems. The State systems vary as to their benefits and qualifications. They would cover generally fewer employees for shorter periods of time, and determination of which State coverage would cover which employees would be extremely difficult and arbitrary, particularly when the employee may spend virtually no time working in the State where he or she lives and may spend equal amounts of time working in several States.

In addition, the States do not want the added burdens of railroad employee unemployment compensation, particularly when many of the State programs are in serious difficulty. It was reported only a few days ago, for example, that the Governor of Louisiana had called a special session of that State's legislature to deal with the precarious condition of that State's unemployment compensation system by reducing benefits and increasing employer taxes.

We appreciate your concern with the difficult and complex budgetary problems which confront this committee and the Congress and we support your efforts to resolve those problems. We do not believe approval of H.R. 2167 will impede those efforts in any way and unemployment compensation relief to the tens of thousands of railroad employees now on furlough and facing furlough in the immediate future is long overdue. We support your efforts to secure repayment of the RUI debt to the trust fund.

We respectfully urge your swift and favorable consideration of H.R. 2167.

Thank you, Mr. Chairman.

[The statement of Mr. Kilroy follows:]

BEFORE THE
SUBCOMMITTEE ON PUBLIC ASSISTANCE
AND UNEMPLOYMENT COMPENSATION
OF THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

TESTIMONY OF RICHARD I. KILROY ON BEHALF
OF THE RAILWAY LABOR EXECUTIVES' ASSOCIATION
ON
H.R. 2167

JULY 14, 1987

Mr. Chairman and Members of the Subcommittee:

My name is Richard I. Kilroy. I am Chairman of the Railway Labor Executives' Association (RLEA) and President of the Brotherhood of Railway and Airline Clerks. My office is located at 3 Research Place, Rockville, Maryland 20850. The RLEA is an unincorporated association of the chief executive officers of all of the standard national and international railway labor organizations in the United States representing virtually all of the railroad contract employees in the country. The chief executives of the following labor organizations are members of the RLEA:

American Railway & Airway Supervisors Assn.,
Division of BRAC
American Train Dispatchers Association
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employes
Brotherhood of Railroad Signalmen
Brotherhood Railway Carmen, Division of BRAC
Brotherhood of Railway, Airline and Steamship Clerks
Hotel Employees & Restaurant Employees International
Union
International Association of Machinists and Aerospace
Workers
International Brotherhood of Boilermakers & Blacksmiths
International Brotherhood of Electrical Workers
International Brotherhood of Firemen & Oilers
International Longshoremen's Association
National Marine Engineers' Beneficial Association
Yardmasters Department, United Transportation Union
Sheet Metal Workers International Association
Seafarers' International Union of North America
Transport Workers Union of America
United Transportation Union

I am accompanied today by Mr. R. T. Bates, President of the Brotherhood of Railroad Signalmen and Chairman of the RLEA Committee on Railroad Retirement and Unemployment Compensation, and James R. Snyder, Chairman, RLEA Committee on Legislation.

Mr. Chairman, the RLEA appreciates the opportunity to present its views on a subject of urgent interest to railroad employees particularly at this time when furloughs from railroad employment are soaring and railroad officials are making public predictions of further cuts in railroad employment of up to 25%.

On July 15, 1985, I testified before this Subcommittee as a Labor Member of the Railroad Unemployment Compensation Committee

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which had been established by the Congress in Section 504 of the Railroad Retirement Solvency Act of 1983. That Committee, we believed, had performed a most difficult task successfully as evidenced by its Report to the Congress dated June 29, 1984.

Again, last July a bill was reported out of the Committee on Energy and Commerce but because of numerous other pressing matters, the Committee on Ways and Means was unable to consider it before the session ended.

It has now been more than three years since the report of the Railroad Unemployment Compensation Committee was filed with the Congress. Labor and Management in that Report had agreed upon what came to be called a consensus package of benefit and tax changes. That agreed program for legislation has been varied from time to time since 1984 as this Committee and the Committee on Energy and Commerce indicated concerns about various provisions. Labor and Management supported H.R. 2167 as recently reported out of the Committee on Energy and Commerce.

It has recently come to our attention that the 6 month earnings qualification period may be the cause of seasonal employees losing their contractual supplemental sickness benefits which are triggered by RUI eligibility. Some two to four thousand maintenance-of-way seasonal employees, for example, stand to lose about \$700 per month. We urge an amendment to eliminate that unintended inequity.

While changes have been made in the law relating to the revenue or tax aspects of our railroad unemployment compensation system, no modifications have been made on the benefits side of the system and our employees desperately require the enactment of those benefits which have been so long delayed.

The RLEA respectfully urges that swift action be taken by this Subcommittee and the full Committee to report out a bill which can be quickly enacted into law.

The RLEA is most concerned about the continued viability of our Railroad Retirement System and the debt owed that System by the railroads as the result of their borrowing from the Retirement Trust Fund to pay unemployment compensation to the tens of thousands of employees laid off by the railroads as the result of the subcontracting of railroad work to non-railroad companies, mergers, abandonments and sales of lines of railroads to newly formed companies which do not hire the railroad employees formerly performing the work in connection with the lines sold.

We agree that the debt should be repaid. It can be repaid by the year 2000 so we are informed if the repayment tax is not discontinued on September 30, 1990, but is continued until 2000 with the rate for 1990 and each year thereafter set at 4.3%. It would also be extremely helpful to the overall system if the revenues from the income taxes on Tier II pensions which is currently being paid into the Railroad Retirement Trust Fund is not diverted to the General Fund on October 1, 1988 or when the transferred amount reaches \$877 million, as presently provided in the law. We strongly recommend that the law be amended so that the revenues from taxes on Tier II pensions continue to be credited to the Trust Fund.

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The Railroad Unemployment Compensation System of this country worked extremely well for over 45 years. A precipitous drop in railroad employment over a relatively short period of time has created a problem which can be solved. The system can be made to work satisfactorily. It is certainly far superior to the alternative offered by the Administration. The RLEA strenuously opposes placing railroad employees in Federal/State unemployment systems. The state systems vary as to their benefits and qualifications; they would cover generally fewer employees for shorter periods of time; and, determination of which state coverage would cover which employees would be extremely difficult and arbitrary, particularly when the employee may spend virtually no time working in the state where he or she lives and may spend equal amounts of time working in several states. In addition, the states do not want the added burdens of railroad employee unemployment compensation, particularly when many of the state programs themselves are in serious difficulty. It was reported only a few days ago, for example, that the Governor of Louisiana had called a special session of that State's legislature to deal with the precarious condition of that state's unemployment compensation system by reducing benefits and increasing employer taxes.

We appreciate your concern with the difficult and complex budgetary problems which confront this Committee and the Congress and we support your efforts to resolve those problems. We do not believe approval of H.R. 2167 will impede those efforts in any way and unemployment compensation relief to the tens of thousands of railroad employees now on furlough and facing furlough in the immediate future is long overdue. We support your efforts to secure repayment of the RUI debt to the Trust Fund.

We respectfully urge your swift and favorable consideration of H.R. 2167.

Thank you.

Mr. PEASE. Thank you, Mr. Kilroy. I appreciate your testimony.

Obviously the retirement fund or unemployment fund would not be in trouble if it weren't for the declining activity in the railroad industry exacerbated by the recession of 1982, and the payroll tax rates wouldn't have to be so high if there were not a declining base of railroad employees.

Mr. Dempsey, in a recent report the American Association of Railroads painted a rather bleak picture of the future of the railroad industry. Increasing competition from trucks and barges have cut into the traditional markets for railroads.

Given your assessment of the railroad industry's outlook, what general policy changes could be made to help alleviate the continuing funding problems of these two programs.

Mr. DEMPSEY. Well, you put your finger on what, from our perspective, is really the heart of the matter.

Since the Staggers Act was passed in 1980, unhappily, our net operating revenues have dropped by 31 percent. Our return on investment is lower than it was before Staggers.

Fortunately, our physical plant is in good shape because of track depreciation provisions of the 1981 Tax Act. Without going into detail, it put about \$2½ billion of cash flow into the system. So, that part of it has been good. We are providing good services, but our root problem has to do with declining demand for our services because we serve smokestack America. We have had huge drops in car loadings in the period from 1980 to 1986—13 of our 18 commodity groups fell between 50 percent and 20 percent and so, at best it has been flat and really been off.

Our rates are depressed by virtue of a big increase in competition from the trucking industry and barge industry, which has been exacerbated by, of course, trucking deregulation. So our rates have gone down as our demand has gone down.

What has been the response? The only one available is sharp reductions in cost and that is where we come to a 41 percent decrease in employment in the rail industry in class I railroads in a very short period of time.

Now, in other circumstances one might have expected that that kind of increase in productivity would have translated into an enhanced ability to pay employment tax and retirement tax and other kinds of benefits, but it has not. The competitive conditions of the marketplace has forced us to move those benefits in effect into the shipping community in order to retain our traffic base.

Now, what does one do about all of that when you look ahead? That is what is at the crux of the problem that I think the Railroad Retirement Commission is going to have to examine. It can't look at this as some technical exercise. It has to look at the future of the industry in terms of what its capacity to pay is; what its labor costs are in comparison with our competitors and all of those associated questions. What can the Congress do in other respects? It can do a lot.

The burden that the railroad industry bears by virtue of subsidies to the heavy trucks and to the barge industry is a very heavy burden. Indeed it is about a billion dollars a year in terms of subsidies, translated into revenues for the rail industry.

My labor associates will scowl at me. We have serious labor problems, and I am not going into them today.

We have labor protection expenses that are burdensome and in our judgment we have difficulties in the negotiating process. Here again the rail industry is treated as some kind of unique animal. We are exposed to secondary pickets, we and the airlines are the only industry in the United States like this. So there are a host of substantive legislative problems. We are subject to enormous skyrocketing costs for injuries to employees under FELA, because we and the Maritime industry are subject to fault recoveries. Everybody else in the United States has a workmen's compensation recovery system and we don't. We are suffering the same way as the doctors are in Florida. All of those matters or burdens are really laid upon us by policies adopted by the Congress over the course of many years.

We are hopeful Congress will look at them and try to put the rail industry in the same position as every other industry in the United States. That would be enormously helpful to this issue. It is clear to me that the burden of putting railroad retirement on a sound financial footing and the unemployment system on a sound financial footing simply can't be borne by the railroad industry alone.

If the rail industry were at a deficit just in the retirement system of, say, 4½ percent, which is what the chief actuary says now, and that were imposed on the rail industry, we are talking about \$450 million a year, or one-third of our net operating revenues.

The industry can't do that and remain in its present configuration. We can shrink the system, and make it just a bulk hauling system if the commission will let us do that. Nobody is going to like it. Shippers aren't going to like it. The communities aren't going to like it. There are going to be bankruptcies if the industry has to shoulder that kind of a burden. So it has got to be shared.

We have got to restructure both of these systems. I don't know about unemployment. I think the restructuring in this bill is OK for unemployment. We support it. We are going to have to restructure railroad retirement. I am frank to say I think we are going to look at the Federal Government's responsibility because there is a legitimate reason for seeking aid from the Federal Government.

I won't go into it now, unless you wish me to. For example, the restrictions on the investment account of the railroad retirement system up until 1984 were onerous. There is a searing indictment of the Treasury Department in the last report of the last Railroad Retirement Commission because they were investing not for the benefit of the trust fund, but for the benefit of managing the money in the Federal Treasury.

That loss now comes to something in the way of \$2½ billion. It can be calculated. I would want the Railroad Retirement Commission to examine these kinds of issues. That is a long-winded and not very conclusive answer, Congressman, but it is not an easy one.

Mr. PEASE. I appreciate that. Can you tell me what the total employment is in the railroad industry today? What you would expect it to be 5 years from now or 10 years from now?

Someone in the earlier panel said that things have got to bottom out. There has to be a bottom in the railroad industry.

Mr. DEMPSEY. Well, this is a very important question; 319,000 is the last monthly report. The figures that the chief actuary looks to have estimates of a continuing decline of, say, 3½, 4½ and 5½ percent over the last several years.

We have experienced a decline in the 7 percent range. Now if that continues—that is what OMB says—there won't be a rail industry into the next century.

We are gathering data now from railroads in terms of what their projections are. That is something that we would want the Commission to consider very carefully, because while it is clear to me that there will continue to be significant declines in the next several years, at the same time it is clear there has to be a bottom.

This decline has to run out at some point. If you want my guess right now, my guess would be after 5 years, perhaps 6 years, perhaps shorter. Then we are down to normal attrition rates. It is just a guess at this point.

Mr. PEASE. What do you think the level of employment is likely to be when you bottom out?

Mr. DEMPSEY. Yes?

Mr. PEASE. What do you think it will be, as compared with 319,250?

Mr. DEMPSEY. I would hesitate to guess, but we will have a good basis for judgment by the time we complete our examination of the plans and prospects of the individual railroads. We have to make different assumptions. I am assuming a flat traffic pattern. What I am looking at is a bottoming out after significant declines in employment of perhaps the 5-percent range or so, for the next 3 or 4 years. We will have calculations made, but we just don't have enough data base right now.

One thing I do know, it is absolutely unrealistic to predict a 5 percent, 5½, 4½ percent decrease reaching indefinitely into the future unless we are contemplating the gradual collapse of the rail system. That could happen.

Mr. PEASE. All of you have been talking about forgiving the interest owed on the debt from the unemployment program to the retirement program. There has been some discussion that both these programs were funded by the industry, it is a matter of going from one to the other, interest owed to oneself.

As I understand it, the retirement system is not in as good a shape as the unemployment system; is that correct? Probably needs all the revenue it can get, from your description. That being the case, does it make sense to forgive the interest that is owed to the retirement system?

Mr. DEMPSEY. The matter can be deferred without any threat to the railroad retirement. Even with the pessimistic scenario we don't run into trouble in the next century. It doesn't have to be dealt with right now.

Certainly the Congress can decide or the parties could agree that repayment taxes should be extended, but it isn't a simple matter whether it came in by way of interest payments from the unemployment account on the one hand, or tax payments into the retirement account on the other, because if it comes in through the retirement tax, the employees bear a share of it. If it comes in

through the existing kind of repayment tax, then the carriers bear the whole burden.

As I say, it can be done either way. The way it was worked out in the context of these negotiations was that this was a tradeoff in effect for some of the benefit changes that the railroads were willing to agree to. That is the problem, and since that related to the whole restructuring of burdens between both systems among all the interested parties, it ought to be dealt with in a comprehensive, thoughtful and deliberate way by the Railroad Retirement Commission.

Mr. PEASE. If I understand it, you are saying that the railroads in effect agreed to support higher benefits for workers in the context of an arrangement where the unions and the employees would agree to an increase in the taxes for the retirement system, thereby sharing part of the cost?

Mr. DEMPSEY. That was one of the concessions made by the union. There were a lot of concessions made by everybody. That is one made by the union. One made by us was to augment the retirement, unemployment benefits, and to index them.

Mr. PEASE. If Congress were then to move in the direction of a surtax on unemployment as a way of dealing with that debt, would that upset the agreement that has been made?

Mr. DEMPSEY. That would change the allocation that was agreed to. I am not saying Congress is bound by our agreements. In the past it has encouraged us to make agreements and the tax has been paid in a timely way. Let this be worked out in accord with the agreement or have modifications made by subsequent negotiations which I would hope would do that.

Mr. PEASE. Mr. Kilroy, are you in agreement with that statement?

Mr. KILROY. I think generally, Mr. Chairman, that there was a negotiated compromise that was undertaken by labor and management on the committee established by the Rail Solvency Act of 1983. I have to agree that there were concessions made on both sides in view of total cost to the industry, what that would mean to them, and that is why we felt, for example, we also felt very strongly that the RUIA should prevail rather than the Federal-State system, a proposal which finally had the full support of the full committee, when we finally testified after the first, after the report was made.

So, there were several things done and I can see that the industry or management would be concerned if one of the concessions that labor made was taken away and then was put in, but we also know that the continued decline in the employment in the industry, I would take some exceptions to. While Mr. Dempsey gave a lot of reasons, and I am sure they are factors, there are other factors involved in the decline in the employment in the industry, not the least of which is mergers, which always result in 95 percent of the cases of a decline in employment as services, duplicative services are eliminated and employment drops.

A good example, of course, would be also what happened to the railroads in the Northeast and the Conrail situation, where at that time, the employment dropped on Conrail alone some 65,000 people in the Northeast in a period of about 8 years.

So we had that and there are, as stated in our testimony, evidence that can be presented to show that work traditionally done in the railroad industry is now being contracted out to other outside sources that are not covered by the Railroad Retirement and Railroad Unemployment Insurance Acts and that takes further numbers out of the industry.

The industry has made it a point to reduce its costs by so-called buyouts of employees, offering them separation pay, to leave the industry. So, of course, each time that happens, you have a double whammy. You have less people on which tax is being paid for retirement, and RUIA and then more people drawing out if they are eligible to take retirement.

So, as long as we have a situation of that kind, we are going to be in continual trouble. Although we think that the system is in fairly good shape, it no doubt needs some fine tuning again, and I guess we are going to get it whether we like it or not.

The numbers, of course, as projected, who knows what is going to happen tomorrow, but I think that Congress needs to take a look at what is happening to the railroad industry and whether or not the removal of track, abandonment of track and all is going to be good, in the country's national interest and national economy as overall picture and I think the Federal Government should have an interest in that and should keep some eye on just what is taking place.

Mergers are not always good. Most of the time we oppose them. We now have the Santa Fe and Southern Pacific, which was an ill conceived merger—3½ years of wasted time, money, and energy, and finally then a decline by the ICC. So these things I think should be looked at very strongly in the future.

Mr. PEASE. Thank you, Mr. Kilroy.

Just one question to refresh my memory. How long has the daily payment rate for unemployment been \$25?

Mr. KILROY. Since 1976 I believe.

Mr. PEASE. Thank you.

Mrs. KENNELLY. I thank you, the panel, for your excellent testimony.

Next panel is: Bruce McIver, Metropolitan Transportation Authority of New York and president, Long Island Rail Road; Alan Dustin, general manager, New Jersey Transit Rail Operations; and Denise H. Earley, government information coordinator, Southeastern Pennsylvania Transportation Authority.

Good morning, gentlemen and ladies.

Mr. McIver, you might like to start off.

STATEMENT OF BRUCE McIVER, METROPOLITAN TRANSPORTATION AUTHORITY OF NEW YORK, AND PRESIDENT, LONG ISLAND RAIL ROAD

Mr. McIVER. Thank you very much, Madam Chairman.

My name is Bruce McIver, and I am president of the Long Island Rail Road, a publicly subsidized commuter service. I would like to submit for the record copies of a position paper on railroad unemployment that was developed jointly by the LIRR and six other publicly operated commuter railroads.

Mrs. KENNELLY. Your submissions will be placed in the record.

Mr. McIVER. Thank you.

I speak to you today on behalf of this group of commuter lines—The Long Island Rail Road, the Northeast Illinois Railroad Corporation, New Jersey Transit, the Port Authority Trans-Hudson Corporation, Southeastern Pennsylvania Transportation Authority, Metro-North Commuter Railroad, and Staten Island Rapid Transit. Representatives of two other commuter railroads—Alan Dustin of New Jersey Transit and Denise Early of SEPTA—will address you briefly in a few moments.

Madam Chairman, unemployment is a thorny issue in the railroad industry today. In the aggregate, railroads have been declining for some time, and total employment has declined from more than half a million 10 years ago to just over 300,000 today.

But as the industry—meaning for the most part, the freight portion of the industry—has declined, another portion has been expanding steadily. Publicly funded and operated local commuter railroads have been adding employees, not laying them off. Since 1983 commuter railroad employment has increased by 12 percent.

It is interesting to review the history of public commuter railroads. Private freight railroads have avoided operating commuter lines because they simply aren't profitable without outside help. So local public commuter lines have evolved, needing taxpayer subsidies of up to two-thirds of operating costs to keep fares managably low. At the Long Island, we receive about 52 percent of our operating budget in the form of state and local subsidies, which is about average for lines such as ours.

Since 1981, public subsidies have grown as Federal subsidies have shrunk. So the burden has been falling increasingly on State and local governments to provide the support that keeps commuter rail seats affordable for the greatest number of people.

At the same time, we commuter railroads have been contributing to the same unemployment compensation fund as all other railroads. The trouble is that those other railroads are interstate, freight and private—and, as I have described, with declining employment. They are fundamentally different from us.

And there lies the problem. Since 1938, railroad employees have received their unemployment benefits according to the Railroad Unemployment Insurance Act, or RUIA. RUIA was enacted because 50 years ago, railroading was an interstate phenomenon. Because workers earned wages in different States, the Social Security Act of 1935 proved too burdensome administratively. Congress solved the problem by covering all railroad employees under a single unified plan.

That was useful in its time. But times have changed. RUIA covered a homogenous industry. That industry today is fragmented by comparison. The framework of RUIA that was so useful half a century ago, has become a burdensome anachronism. Let me explain.

First, RUIA unemployment taxes—unlike state unemployment taxes—are not based on the unemployment history of individual employers. All railroads are taxed at an equal rate.

Second, the rapid decline in railroad employment in general, due, as I have emphasized, solely to declining freight employment, has put the railroad retirement fund in serious financial jeopardy. A special portion of the tax is set aside explicitly for repayment of

money borrowed to finance growing deficits. Since 1960, the fund has broken even only between 1974 and 1980. Otherwise, it has operated in the red, and debt today is approaching a billion dollars.

Finally, for commuter railroads, the benefits we receive from the unemployment fund—in the form of payments to unemployed workers—are dwarfed by the payments we are forced by law to make. As it stands today, we seven commuter railroads pay about \$18.4 million a year into the fund, and receive less than \$5 million in benefits. That is a loss of about \$13.5 million.

And that is also something else. That is, in fact, a subsidy to private railroads. And that is what I am here today to argue against. It is unfair to the taxpayer, it is unfair to our workers, because, as I will explain, their benefits are lower than they should be, and it obscures the growing problem of what to do about our declining freight railroad industry.

In effect, public commuter railroads are being asked to subsidize the unemployment obligations of private companies, using tax dollars. An expanding public sector is shoring up a shrinking private one, and the reason is simply a law that no longer governs reality.

But, in the alternative, if commuter lines could join the unemployment plans of the States where they operate—and all of us operate in a single State or at most two States—we could sharply increase benefits to our workers at lower costs. RUIA benefits are consistently far lower than those provided under state unemployment plans where our commuter authorities operate. And increases in RUIA benefits are constrained by the need to finance those enormous deficits.

Under State plans, on the other hand, commuter railroads may participate on a self-insurance basis, and our employment history suggests that our premium payments would correspond to minimum contribution levels.

I submit that this is a simple issue. Tax supported entities are being compelled by law to subsidize private entities. And I further submit that the problem can only get worse. As private freight railroads continue to decline, our share of compensating the workers they lose will grow accordingly. A \$13.5 million problem today will get steadily more expensive, unless you act to remedy the situation.

So here is our recommendation. RUIA unfairly groups commuter railroads with private freight lines. Our contribution to the railroad unemployment fund constitutes a hidden public subsidy to those private operations, and should be ended. Public commuter railroads should be granted exemption from RUIA, and allowed to join the unemployment plans of the States where they do business.

This would bring about a significant increase in benefits to our employees. Yet because the number of commuter employees is only a small portion of total railroad employment, the effect on the RUIA system of an exemption would not be great.

At the very least, commuter railroads should be treated as a separate class under RUIA and pay unemployment taxes, including repayment taxes, starting now, based on our employment experience. It is only fair that these changes occur.

I am confident that the Congress will act to remedy this inequity, and I am confident that commuter railroads will continue to merit the lower unemployment contributions I insist we should be

paying. But the changes in RUIA I am suggesting beg an important question. And that is, how are we to deal with the impact of these changes on the private freight railroad industry.

I am aware that the freight lines may oppose these recommendations. They may want to continue the taxpayer subsidies provided by commuter railroads. But that is no reason to continue saddling commuter operations with part of the freight lines' burden. I would suggest, Madam Chairman, that what happens to private freight railroads is a separate and larger issue. I suggest that it is an issue that needs to be addressed directly, rather than through hidden subsidies by the public sector.

Thank you for your consideration. Now, I would like to ask Mr. Dustin and Ms. Earley for their comments.

[The position paper earlier referred to follows:]

Railroad Unemployment Insurance and Commuter Railroads

**The Long Island Rail Road
New Jersey Transit Corporation
Metro-North Commuter Railroad
Southeastern Pennsylvania Transportation Authority
Port Authority Trans-Hudson Corporation
Northeast Illinois Railroad Corporation
Staten Island Rapid Transit Operating Authority**

April, 1987

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The Issue

Public commuter railroads should be exempt from federal railroad unemployment laws, and covered instead under state unemployment compensation and insurance programs.

Since 1938, railroad employees have received unemployment benefits according to the Railroad Unemployment Insurance Act (RUIA), which was enacted because of the unique interstate character of railroad work forces. But today, for publicly funded and operated local commuter railroads, both coverage and premium payments under RUIA constitute a financial burden wholly disproportionate to benefits received. They amount to a hidden public subsidy of private freight railroads.

If public commuter railroads were covered under state plans, rather than RUIA, benefits would increase substantially at lower cost. Under RUIA, publicly subsidized commuter railroads now pay \$18.4 million annually in premiums, and receive only \$4.9 million in benefits paid on their behalf. The difference—\$13.5 million—thus subsidizes the unemployment compensation fund of declining private freight railroads.

This booklet summarizes the history of RUIA, the heavy burden this outmoded system places on modern commuter railroads, and the reasons we believe that a new approach to unemployment coverage is necessary. At the very least, RUIA should immediately be amended so that RUIA taxes, including repayment taxes, are based on railroads' actual unemployment history, which would reduce the burden on commuter railroads without diminishing current benefits.

RUIA Background

RUIA was not designed for modern commuter railroads.

Railroad workers were covered originally by the unemployment provisions of the Social Security Act of 1935. But railroad workers often earn wages in different states, and this presented sufficient administrative problems to convince Congress to enact RUIA in 1938.

The unique character of interstate agencies and industries remains a valid justification for a corresponding unique approach to unemployment compensation, such as RUIA for interstate freight railroads. But state-owned commuter railroads are by their nature local entities, and their employees work in single states, or in at most two states. RUIA does not address the needs of commuter railroads.

Table 1

Publicly Funded and Operated Commuter Railroads and Where Their Employees Work		Percent Of Employees
	State	
LIRR	New York	100%
(Long Island Rail Road)		
SEPTA	Pennsylvania	100%
(Southeastern Pennsylvania Transportation Authority)		
METRA	Illinois	100%
(Northeast Illinois Railroad Corporation)		
SIRTOA	New York	100%
(Staten Island Rapid Transit Operating Authority)		
NJ TRANSIT	New Jersey	98%
	New York	2%
PATH	New Jersey	80%
	New York	20%
METRO-NORTH	New York	75%
	Connecticut	25%
(Metro-North Commuter Railroad)		

Railroad Unemployment and Taxes

Under RUIA, only about one quarter of commuter railroads' contributions are returned to employees in the form of benefits.

RUIA taxes are not based on the unemployment experience of individual employers. All railroads are taxed at an equal rate. Total railroad employment has decreased from 540,000 in 1976 to 311,000 in January of 1987. By contrast, commuter railroad employment has been steady, and between 1983 and 1986 actually increased from 18,600 to 20,900.

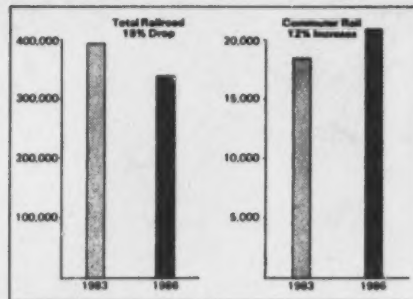


Table 2
Total Railroad Employment

1976	-	540,000
1981	-	503,000
1983	-	395,000
1986	-	338,000
1987 (Jan.)	-	311,000

The precipitous drop in railroad employment, due solely to declining freight employment, has put the RUIA unemployment fund in serious trouble. The RUIA system has a debt of about \$866 million to the Railroad Retirement account, which must be repaid through employer taxes. Since 1960, the fund has approached the break-even level only between 1974 and 1980. Otherwise it has operated in the red.

RUIA's Employer Taxes

Base Tax

Since January 1, 1984, rate is 8% of first \$600 per month in earnings per employee, equal to \$48 per month or \$576 per year per employee. (Prior to January 1, 1984, monthly wage base was \$400.)

Repayment Tax

Initiated July 1, 1986 to cover deficit in fund. Based on \$7,000 in annual earnings.

1986 - 4.3% on \$7,000 or \$301 per year per employee.

1987 - 4.7% on \$7,000 or \$329 per year per employee.

1988 - 5.0% on \$7,000 or \$420 per year per employee.

Railroad unemployment taxes today amount to about 3 to 3.5 percent of total wages, drawn from two separate taxes (see box). In 1982, they were 1.42 percent (against an average U.S. unemployment tax at that time of 1.02 percent). Part of the railroad tax burden is paid explicitly to cover the deficit in the fund.

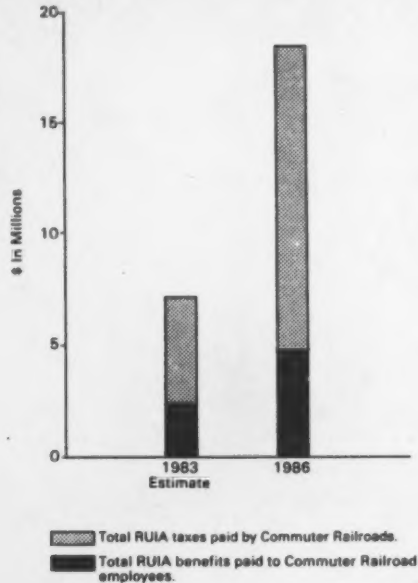


Table 3
Overpayment of Unemployment Taxes (in millions)

	RUIA Taxes Paid	RUIA Benefits Paid		Loss To Commuter Railroads
		Unemployment	Sick Benefits	
LIRR	\$ 6.4	\$ 0.2	\$ 1.4	\$ 4.8
NJ TRANSIT	\$ 3.1	\$ 0.3	\$ 0.6	\$ 2.2
METRO-NORTH	\$ 5.5	\$ 0.4	\$ 1.0	\$ 4.1
SEPTA	\$ 1.2	\$ 0.2	\$ 0.3	\$ 0.7
PATH	\$ 1.0		\$0.2	\$ 0.8
SIRTOA	\$ 0.2		.31	\$ 0.1
METRA	\$ 1.0		\$0.2	\$ 0.8
Total	\$18.4	\$4.9*		\$13.5

* RUIA payouts includes FELA expenses subsequently reimbursed to RUIA account. Actual cross-subsidy is more than \$13.5 million.

Under this system, only about a quarter of commuter railroads' \$18.4 million in annual RUIA contributions are returned in the form of benefits.

Commuter Railroads

Taxpayers subsidize private freight railroads through RUIA unemployment contributions.

To keep fares manageably low, all publicly supported and operated commuter lines receive heavy local, state, and federal tax subsidies, up to 67 percent of operating costs. The average subsidy is about 52 percent. Historically, state and local subsidies were required because private railroads preferred not to divert freight revenues to commuter operations.

Table 4
Revenues and Subsidies (in millions)

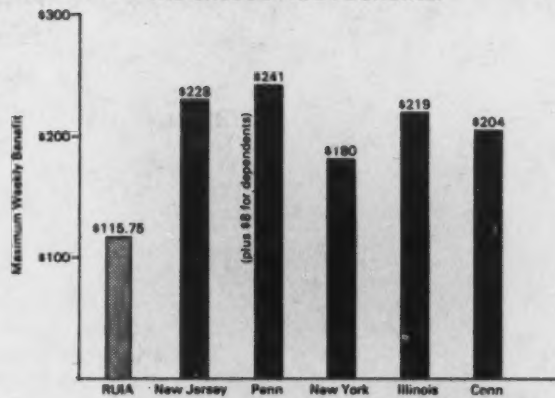
	Fares	Subsidy	Costs
LIRR	\$266	\$296	\$ 562
NJ TRANSIT	136	95	231
METRO-NORTH	185	217	402
SEPTA	50	101	151
PATH	43	41	84
SIRTOA	6	9	15
METRA	38	40	78
Total	\$724	\$799	\$1,523

Since 1981, the state and local share of commuter subsidies has grown, as federal operating subsidies have shrunk 24 percent. Today, with private freight railroads in decline, expanding public commuter railroads are forced to use a portion of those public funds to cover the costs of compensating freight workers for the loss of their jobs. Thus the \$13.5 million not returned as benefits to commuter railroads represents a hidden public subsidy of private railroads.

Advantages of State Compensation

If commuter railroads shifted their unemployment coverage to state systems, costs would drop and benefits would increase.

Maximum RUIA benefits are consistently lower than those in state systems, though the RUIA system has generally more liberal eligibility requirements (granting benefits, for example, to employees dismissed for cause). In 1983, only nine states had lower benefit packages than RUIA. In all states with publicly funded and operated commuter railroads, benefits exceed RUIA benefits.



Further, increases in maximum RUIA benefits—which actually dropped in 1986 from \$25 per day to \$23.15—are constrained by the need to finance enormous deficits, caused by borrowing to cover prior shortfalls. (Congress is presently considering proposals to raise benefits to \$30 per day—still lower than state benefits—and to raise RUIA taxes).

As publicly-funded operators, commuter railroads can participate in state unemployment systems on a self-insurance basis. Given the commuter railroads' employment history, their premium payments would correspond to minimum contribution levels in state plans, in contrast to the arbitrarily high levels required by RUIA, so that costs would drop despite higher benefits.

Conclusions and Recommendations

We believe that RUIA unfairly groups commuter railroads with private freight railroads, and that the disproportionate burden imposed on the commuter railroads constitutes an unreasonable harm to our continuing operations. We ask that publicly funded and operated commuter railroads be granted an exemption from RUIA, and allowed to ally themselves with unemployment plans in the states where they do business. At the very least, commuter railroads should be treated as a separate classification under RUIA, and pay unemployment taxes on an experience-rated basis. This change should be implemented immediately, and should take into account not only base RUIA taxes, but the repayment tax as well.

STATEMENT OF DENISE H. EARLEY, GOVERNMENT INFORMATION COORDINATOR, SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY

Ms. EARLEY. Good morning, Chairwoman Kennelly, and subcommittee members. I am a member of the government relations staff of the Southeastern Pennsylvania Transportation Authority, in Philadelphia. I join my colleagues here today in requesting legislative relief from the railroad unemployment insurance and the railroad retirement repayment tax levied against commuter rail operators.

SEPTA has been operating a commuter railroad service since January 1, 1983, under a mandate of the Northeast Rail Act of 1981. To date, after 4½ years, SEPTA has not laid off a single railroad employee but has been forced to pay in excess of \$1 million in unemployment taxes in fiscal year 1986 alone.

Thank you for this opportunity to appear and for your consideration of legislative relief.

[The statement of Ms. Earley follows:]

STATEMENT OF THE SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY

The Southeastern Pennsylvania Transportation Authority operates mass transit in Bucks, Chester, Delaware, Montgomery and Philadelphia Counties, and carries over one million daily passengers. Under the Northeast Rail Service Act (NERSA) of 1981, SEPTA became a direct operator of commuter rail service commencing on January 1, 1983.

The tax structure of the Railroad Unemployment Insurance Act (RUIA) is an issue which will soon come before the House Ways and Means Committee. I believe that SEPTA and other commuter railroads have significant concerns regarding the equity of RUIA, and the pending effort may be an appropriate forum to address such concerns.

On Wednesday, May 6 the House Energy and Commerce Committee reported H.R. 2167, a bill increasing RUIA taxes and benefits, and changing RUIA to an "experience rated" basis (in five years) which will partially base unemployment taxes on the level of unemployment of each railroad. Prior to the Committee action, the commuter agencies had urged the Committee to provide some form of relief to commuter railroads, which have little or no unemployment and see themselves cross-subsidizing the chronic unemployment costs of freight railroads. The Committee believed that the "experience rating" should be the basis for such relief, and that H.R. 2167 was the basis from which to work. The Committee Report accompanying H.R. 2167 acknowledges the concerns of the commuter railroads, and suggests that the experience rating be the basis for such relief.

The House Public Assistance and Unemployment Compensation Subcommittee, chaired by Congressman Thomas Downey of New York, will soon begin consideration of the bill. The commuter agencies are proposing to expedite the bill's experience rating for commuter railroads in order that commuter railroad payments more quickly reflect a rate in accordance with the level of unemployment at each agency. This is based on the fact that commuter rail agencies can document that there is little or no unemployment within their system. This position keeps RUIA intact, and would maintain all RUIA benefits to labor.

The commuter agencies are also seeking an exemption from the "repayment tax" levied through the Railroad Retirement Solvency Act of 1983 to repay RUIA debts to the Railroad Retirement Account. It can be documented that commuter railroads had little unemployment during the years when RUIA incurred such debts. Publicly supported commuter agencies should not have to cover debts incurred through the chronic unemployment in the rail freight industry.

On behalf of the eight operators of commuter rail passenger service,¹ I encourage you to support the following:

¹ Robert R. Kiley, Metropolitan Transportation Authority; Bruce McIver, The Long Island Railroad Company; Peter E. Stangl, Metro-North Commuter Railroad Company; Jerome C.

1. An expedited "experience-rating" for commuter rail agencies.
2. An exemption from the Railroad Retirement repayment tax for commuter agencies.

The proposals we suggest are, we believe, reasonable and consistent with other federal policies which direct local entities receiving public assistance to control costs. Further, actions which reduce commuter rail expenditures would help offset the continuing decline of federal operating assistance.

Finally, the commuter railroads have a sincere belief that their interests were not adequately considered in the "consensus plan," which laid the framework for H.R. 2167. Commuter railroads were not part of this "consensus," and believe that additional measures are necessary to address the unique concerns of the commuter agencies.

Mrs. KENNELLY. Thank you, Denise.
Alan Dustin.

STATEMENT OF ALAN DUSTIN, GENERAL MANAGER, NEW JERSEY TRANSIT RAIL OPERATIONS

Mr. DUSTIN. Yes, good morning, Madam Chairman, members of the subcommittee. My name is Alan Dustin, vice president and general manager of New Jersey Transit Rail Operations, a publicly subsidized commuter service operating almost wholly within the States of New Jersey and New York City.

I appreciate the opportunity to make a very brief statement here this morning, because the commuter agencies which consist totally of about 6 percent of total railroad employment were not represented on the labor management group, so we didn't have the opportunity to help formulate H.R. 2167.

I fully support the testimony presented by Mr. McIver. The needs of the commuter railroads must be addressed and should be addressed at this particular point in time. We simply can't afford to continue to cross-subsidize freight railroads.

It is rather ironic that New Jersey Transit exists today because of the passage of the Northeast Rail Service Act several years ago. One of the motivations was to eliminate the subsidy that Conrail was then paying to subsidize commuter operations which they were operating and now we find ourselves, after shouldering the burden of taking over the commuter operations in New Jersey, is essentially subsidizing the freight railroad system to one degree or another. New Jersey Transit Rail operations since 1983 have increased by 15 percent while overall rail employment has declined by about 15 percent.

I urge the subcommittee to establish an experience-rated tax for commuter railroads immediately, or certainly on a more accelerated basis rather than in 5 years, as included in H.R. 2167.

Furthermore, to exempt commuter railroads from the repayment tax, since commuter railroads have not contributed to the unemployment problem faced by the for-profit freight railroads.

Such an approach would have no impact on rail employees and have only minimal impact on the freight industry.

The U.S. Department of Treasury, in a 1984 report, stated that the loss of commuter railroad payment would have minimal impact on the financial health of the RUIA system. If proper and accepta-

Premo, New Jersey Transit; James E. Cole, Metropolitan Rail; David L. Gunn, Staten Island Rapid Transit Operating Authority; Richard R. Kelly, Port Authority Trans-Hudson Corporation; and Joseph T. Mack, Southeastern Pennsylvania Transportation Authority.

ble, I would like to present a copy of this report to be included as part of the record.

Once again, thank you for the opportunity to make these comments. My full comments have been provided to the staff of your subcommittee.

Mrs. KENNELLY. Mr. Dustin, the report will be included in the record.

[The report of the Department of Treasury "Railroad Retirement and Unemployment Systems: Historical and Future Impacts on Commuter and Freight Railroads", dated May 1984, is maintained in the committee files.]

Mr. DUSTIN. Thank you.

[The statement of Mr. Dustin follows:]

WRITTEN TESTIMONY OF THE
NEW JERSEY TRANSIT CORPORATION
SUBMITTED TO THE SUBCOMMITTEE ON
PUBLIC ASSISTANCE AND UNEMPLOYMENT COMPENSATION

The New Jersey Transit Corporation, the statewide public transportation agency of New Jersey, appreciates this opportunity to submit testimony to the Subcommittee on Public Assistance and Unemployment Compensation concerning H.R. 2167, legislation to amend the Railroad Unemployment System.

While NJ TRANSIT would prefer to be exempt from the Federal Railroad Unemployment System, we recognize that such an exemption would be difficult to achieve. Rather, NJ TRANSIT strongly urges the Subcommittee to immediately implement an experience rating for commuter rail operators and to exempt commuter railroads from the repayment tax as a means for repaying funds borrowed from the Railroad Retirement account.

NJ TRANSIT strongly urges the Subcommittee to accept these proposed changes for the following reasons:

CROSS-SUBSIDIZATION

Under RUIA, only about one quarter of commuter railroads' contributions are returned to employees in the form of benefits. This is because commuter railroad employment continues to grow at a time when overall railroad employment continues to decline. Between 1983 and 1986, NJ TRANSIT rail employment grew by approximately 15 percent while overall railroad employment declined by 15 percent. Since the proposed legislation would continue to tax all railroads at an equal rate for a five year period, commuter railroads would continue to pay more than their employees receive in benefits. For example, NJ TRANSIT's base tax payments (excluding the repayment tax) are approximately \$2.2 million annually, although benefits received by NJ TRANSIT employees totaled less than \$1 million.

COMMUTER RAILROADS HAVE NOT CONTRIBUTED TO UNEMPLOYMENT PROBLEM

Similar to the base tax, the repayment tax results in a cross-subsidization of freight railroads. NJ TRANSIT pays approximately \$1.1 million in repayment taxes although NJ TRANSIT was never the cause of the serious railroad unemployment program which created the need to borrow money from the Railroad Retirement Account. In fact, the U.S. Department of Treasury in a 1984 report requested by the Senate Finance Committee clearly stated that "the current situation could be interpreted as a cross-subsidy of the freight industry by the commuter agencies." The unemployment rate at NJ TRANSIT and the other commuter railroads between 1983 to the present has been minimal at most. Prior to 1983, most of the commuter railroads were not in existence.

PUBLIC AGENCIES VERSUS PRIVATE FREIGHT RAILROADS

While the railroad industry has always been treated as a collective entity, times and circumstances have changed. The passage of the Northeast Rail Services Act (NERSA) in 1981 and the establishment of publicly supported commuter railroads in New Jersey, New York, Connecticut, and Pennsylvania requires a different and unique approach to Federally mandated programs, particularly when these Federally mandated programs result in publicly supported commuter rail operations cross-subsidizing profitable freight railroads. In 1986 these commuter rail operators cross-subsidized freight operations by approximately \$13.5 million through the payment of RUIA taxes.

IMPACT ON RUIA SYSTEM

The proposal to immediately institute an experience rated system for commuter railroads and to exempt these railroads from the repayment tax would result in an approximate \$13 million annual reduction in RUIA revenues. While the cost-savings to the commuter railroads would be significant, the revenue loss impact on RUIA would be minimal. The 1984 U.S. Department of Treasury Report stated "Because the percentage of rail workers employed by the commuter agencies is small, the revenue loss would also be small, on the order of 3-4 percent." The report further stated that "debts accumulated by the unemployment program are substantial enough that the contribution of commuter agencies to the "repayment" tax does not make much difference as to when the loans are repaid."

IMPACT ON RAIL LABOR

There would be no impact on rail labor by immediately implementing an experience rated tax for commuter rail operators. In fact, the high cost of RUIA must be considered by NJ TRANSIT during local labor negotiations, particularly since unemployment benefit payments are much higher than those paid for NJ TRANSIT employees not covered under RUIA.

IMPACT ON NJ TRANSIT

An experience rated system and exemption from the repayment tax would result in a cost savings of approximately \$2.2 million annually to NJ TRANSIT. This amount represents 5 percent of the total Federal Operating Assistance NJ TRANSIT receives through the Urban Mass Transportation Administration. NJ TRANSIT continues to be faced with cost increases which NJ TRANSIT has no control over. A more equitable RUIA tax program would help to control one cost which has continued to escalate.

MANAGEMENT-LABOR AGREEMENT DOES NOT INCLUDE COMMUTER RAILROADS

One final issue which needs to be addressed is the fact that the management-labor agreement which resulted in the introduction of this legislation did not include the commuter railroad operators. We had no say in how the tax structure or benefits should be provided. We were not asked to participate in discussions, nor were our concerns ever addressed.

CONCLUSION

NJ TRANSIT strongly urges the Subcommittee to amend H.R. 2167 to provide for an immediate experience rating for commuter railroads and an exemption from the repayment tax. Such an action would end the unfair practice of commuter railroads subsidizing freight operators. NJ TRANSIT's cost savings would be approximately \$2.2 million or about 5 percent of the total amount of Federal operating assistance provided by UMTA. On behalf of our 70,000 daily rail riders, I once again thank you for this opportunity to present the commuter railroad concerns to this Subcommittee.

Mrs. KENNELLY. Mr. Pease.

Mr. PEASE. Thank you.

I am not really sure I have any questions. Your testimony is on a particular aspect of the problem. I think you have presented the situation well. We can understand that.

Obviously, if we were to exempt commuter railroads from the UI system that is applicable to freight railroads, would that not worsen the situation for those who are remaining in the system?

I guess I would like to try to get a handle on the extent to which the exemption would worsen the situation. I think one of you said that only 6 percent of the total, so it should not be too major. How much more are you, the commuter railroads as a group, paying than you are drawing out?

Mr. McIVER. I believe the figure is \$13½ million—the difference between the payments that we are making to the system and the benefits that we are drawing out. So our view is that our subsidy is—

Mr. PEASE. \$13½ million?

Mr. McIVER. Per year.

Mr. PEASE. As a group?

Mr. McIVER. Yes.

Mr. PEASE. I think that is all I have.

Mrs. KENNELLY. Well, just reviewing the history of why we have the railroad funds, the fact that people from different States were being paid the same wages and when they filed for unemployment, they received different levels of unemployment compensation, evidently you have resolved that as a future problem for you. In case employment doesn't stay as good as it is now, it would not bother you if in fact State unemployment compensation was different in different States for your workers?

Mr. McIVER. Well, in terms of my railroad we operate only in New York State and there would be no real effect other than their benefits under unemployment, under New York State unemployment would increase.

Mrs. KENNELLY. I see the answer to my question right there.

Mr. DUSTIN. Ninety-eight percent of our employees live in New Jersey.

Mr. McIVER. Metro North, I believe, has 25 percent and 75 percent; 25 percent in your State, 75 percent in New York State. Whichever system applied they would be better off. I think dealing with two States is a situation we could manage.

Mr. DUSTIN. What are we talking about on the basis of unemployment for last year, any figures?

Ms. EARLEY. None.

Mr. McIVER. We occasionally take benefits out of this for unemployment that results from injuries, other kinds of things, and we have reduced our employment a little bit at the railroad, but it has been through using attrition and retirees. New Jersey Transit employment has gone up generally. The commuter section of the railroad industry, if it is a part of the railroad industry, as other people would argue, I would argue differently, has increased, while the freight industry is declining.

Mrs. KENNELLY. What you are telling me is very little unemployment in commuter—

Mr. McIVER. Zero.

Ms. EARLEY. Zero.

Mrs. KENNELLY. Thank you.

Mr. PEASE. Ms. Earley, you mentioned earlier that for a number of years the freight system complained that they were subsidizing commuters, is that right?

Mr. DUSTIN. Well, the Northeast Rail Services Act carried a provision that forced Conrail to divest itself of commuter operations because they were in effect subsidizing the commuter operations and it tended to harm them financially. That is when New Jersey took over the railroad operation and it happened in a number of other cases. So the States were faced with that tremendous burden at that time of taking on within their own treasury the cost of operating commuter services from the subsidy basis and I mentioned that in irony that now we in fact are cross-subsidizing the freight railroads.

Mr. PEASE. You think turnabout is fair play in the sense of fairness. Do you think you ought to subsidize them for a while?

Mr. DUSTIN. Well, we have only been around for 5 years—New Jersey Transit. We have been subsidizing them ever since.

Mr. PEASE. How long did the freight subsidize the commuter service? Maybe we can work out a—

Mr. DUSTIN. Conrail I think before they were formed in 1976 and this came about I think in the late 1970's or early 1980's, 1981. But in the future, we see—I agree with what Mr. Dempsey said today—that railroad employment is going to decline in the future, but on the commuter side, which is subsidized by the taxpayers, that is, some distinction from the railroad, that employment will continue to increase or at least remain very stable in New Jersey Transit.

We see our ridership has been growing at a rate of about 12 percent a year in the last 5 years, and although we see some leveling off in the future, we see a continued demand at least in our part of the world, to get people from New Jersey to New York, where you have very heavy constrictions on highway and other forms of transportation.

So, we see a very definite continuing need in the foreseeable future, which should keep our employment increasing, if not, at the worst, stable.

Mr. PEASE. Thank you.

I was just toying with you a little bit.

I think Mrs. Kennelly and I would be in agreement with most Members of Congress that there ought to be an accounting system where we don't subsidize one operation from another operation, particularly, as you point out, subsidize a private industry through the public sector. Whether we will be able to do anything about it or not, in this case, when we have serious, serious problems with both the unemployment and retirement fund, is another matter.

Thank you.

Mrs. KENNELLY. Thank you gentlemen. Thank you, Denise.

[Whereupon, at 11:45 a.m., the hearing was adjourned.]